

---

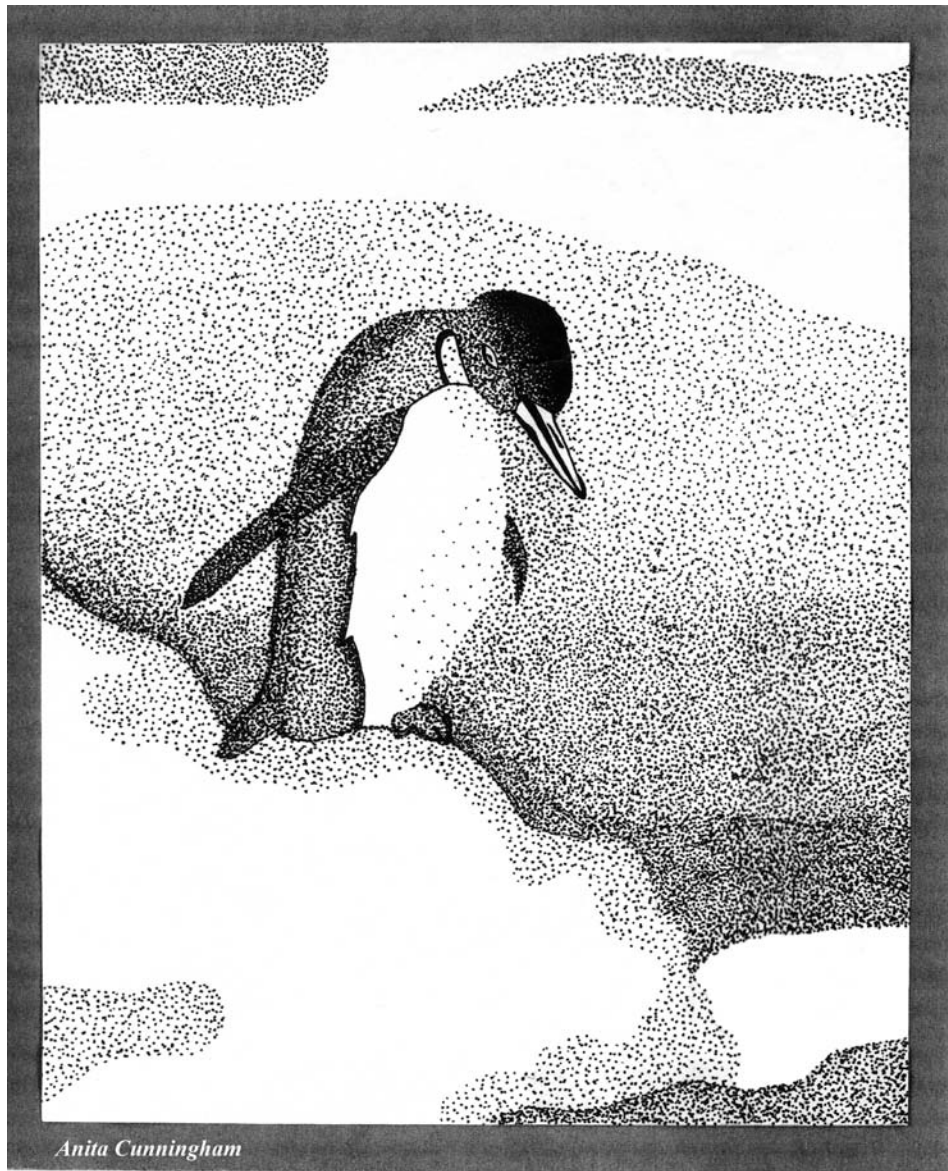
# TEXAS REGISTER

*Volume 38 Number 11*

*March 15, 2013*

*Pages 1743 - 1930*

---



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

**Secretary of State –**  
John Steen

**Director –**  
Dan Procter

**Staff**  
Patricia Aguirre-Busch  
Leti Benavides  
Dana Blanton  
Elaine Crease  
Kris Hogan  
Belinda Kirk  
Roberta Knight  
Jill S. Ledbetter  
S. Gail Woods  
Mirand Zepeda-Jaramillo

# IN THIS ISSUE

## **ATTORNEY GENERAL**

Requests for Opinions.....1749

## **PROPOSED RULES**

### **STATE OFFICE OF ADMINISTRATIVE HEARINGS**

#### **RULES OF PROCEDURE**

1 TAC §155.505.....1751

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### **REIMBURSEMENT RATES**

1 TAC §355.8066.....1752

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **UNIFORM MULTIFAMILY RULES**

10 TAC §§10.1001 - 10.1003 .....1758

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### **SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**

16 TAC §25.142.....1759

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **COMBATIVE SPORTS**

16 TAC §§61.20, 61.40, 61.46, 61.47.....1760

### **STATE BOARD OF DENTAL EXAMINERS**

#### **DENTAL LICENSURE**

22 TAC §§101.1 - 101.7, 101.9 .....1763

#### **DENTAL HYGIENE LICENSURE**

22 TAC §§103.1 - 103.8 .....1768

### **CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

#### **INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE**

25 TAC §§702.9, 702.11, 702.13, 702.19 .....1772

#### **GRANTS FOR CANCER PREVENTION AND RESEARCH**

25 TAC §§703.2, 703.3, 703.5 - 703.8, 703.10, 703.11, 703.13, 703.21, 703.25, 703.26 .....1776

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **PERMITS BY RULE**

30 TAC §106.359.....1786

### **STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS**

30 TAC §§113.100, 113.120, 113.130, 113.180, 113.190, 113.230, 113.240, 113.260, 113.290, 113.300, 113.340, 113.390, 113.400, 113.410, 113.420, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.670, 113.690, 113.770, 113.790, 113.880, 113.890, 113.1040, 113.1090, 113.1110, 113.1130, 113.1140, 113.1160, 113.1170, 113.1300, 113.1320, 113.1340, 113.1350, 113.1370, 113.1380, 113.1390, 113.1400, 113.1410, 113.1425, 113.1435, 113.1445, 113.1450, 113.1455, 113.1460, 113.1465, 113.1470, 113.1475, 113.1480, 113.1485, 113.1495, 113.1500, 113.1505, 113.1510, 113.1515, 113.1520, 113.1525, 113.1530, 113.1535, 113.1555.....1815

30 TAC §§113.150, 113.1190, 113.1200 .....1820

#### **PUBLIC DRINKING WATER**

30 TAC §290.42, §290.44.....1824

30 TAC §290.109.....1836

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### **TAX ADMINISTRATION**

34 TAC §3.588.....1840

### **TEACHER RETIREMENT SYSTEM OF TEXAS**

#### **MEMBERSHIP CREDIT**

34 TAC §25.1, §25.6.....1844

34 TAC §25.21.....1845

34 TAC §25.43, §25.47.....1846

34 TAC §25.81.....1847

#### **EMPLOYMENT AFTER RETIREMENT**

34 TAC §31.14.....1848

34 TAC §31.41.....1850

#### **HEALTH CARE AND INSURANCE PROGRAMS**

34 TAC §41.4.....1851

#### **QUALIFIED DOMESTIC RELATIONS ORDERS**

34 TAC §47.10.....1853

### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES**

40 TAC §§5.451 - 5.458 .....1854

#### **NURSE AIDES**

40 TAC §§94.1 - 94.11.....1857

40 TAC §§94.1 - 94.12 .....1857

### **TEXAS DEPARTMENT OF TRANSPORTATION**

#### **FINANCE**

43 TAC §5.107, §5.109.....	1865
CONTRACT AND GRANT MANAGEMENT	
43 TAC §9.40.....	1867
<b>WITHDRAWN RULES</b>	
<b>TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS</b>	
UNIFORM MULTIFAMILY RULES	
10 TAC §10.208.....	1869
<b>TEXAS MEDICAL BOARD</b>	
GENERAL PROVISIONS	
22 TAC §161.3.....	1869
<b>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>	
GROUNDWATER PROTECTION RECOMMENDA- TION LETTERS AND FEES	
30 TAC §§339.1 - 339.3 .....	1869
<b>ADOPTED RULES</b>	
<b>TEXAS HEALTH AND HUMAN SERVICES COMMISSION</b>	
MEDICAID HEALTH SERVICES	
1 TAC §354.1430, §354.1432.....	1871
1 TAC §354.1430, §354.1432.....	1872
REIMBURSEMENT RATES	
1 TAC §355.7001 .....	1872
<b>TEXAS MEDICAL BOARD</b>	
GENERAL PROVISIONS	
22 TAC §161.3.....	1872
LICENSURE	
22 TAC §163.2.....	1873
PROCEDURAL RULES	
22 TAC §187.44.....	1875
OFFICE-BASED ANESTHESIA SERVICES	
22 TAC §192.1, §192.2.....	1875
PAIN MANAGEMENT CLINICS	
22 TAC §195.2.....	1876
<b>TEXAS DEPARTMENT OF TRANSPORTATION</b>	
PUBLIC INFORMATION	
43 TAC §3.12.....	1877
FINANCE	
43 TAC §5.42, §5.44.....	1877

<b>TRAVEL INFORMATION</b>	
43 TAC §23.27.....	1879
43 TAC §§23.51 - 23.59 .....	1879
43 TAC §§23.101 - 23.105 .....	1879
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Texas Education Agency.....	1881
Texas Department of Public Safety.....	1881
<b>Adopted Rule Reviews</b>	
Department of Information Resources.....	1881
Texas Department of Public Safety.....	1882
<b>TABLES AND GRAPHICS</b>	
.....	1883
<b>IN ADDITION</b>	
<b>Texas Department of Agriculture</b>	
Request for Proposals: 2013 Specialty Crop Block Grant Pro- gram .....	1887
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings.....	1887
<b>Employees Retirement System of Texas</b>	
Contract Award Announcement.....	1888
<b>Texas Commission on Environmental Quality</b>	
Agreed Orders.....	1888
Notice of District Petition .....	1891
Notice of Minor Amendment Radioactive Material License Number R04100.....	1893
Notice of Opportunity to Comment on Agreed Orders of Administra- tive Enforcement Actions .....	1894
Notice of Opportunity to Comment on Default Orders of Administra- tive Enforcement Actions .....	1896
Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions .....	1897
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 106 .....	1898
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113.....	1898
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 290 .....	1899
Notice of Water Quality Applications.....	1899
<b>Texas Facilities Commission</b>	
Request for Proposals #303-4-20372.....	1901
Request for Proposals #303-4-20373.....	1901

**Texas Health and Human Services Commission**

Public Notice.....	1901
Public Notice.....	1901

**Department of State Health Services**

Correction of Error.....	1902
--------------------------	------

**Texas Department of Housing and Community Affairs**

HOME Investment Partnerships Program 2012 HOME Single Family Programs Reservation System Notice of Funding Availability (NOFA) .....	1904
--	------

**Texas Department of Insurance**

Company Licensing .....	1905
-------------------------	------

**Texas Department of Licensing and Regulation**

Vacancies on Air Conditioning and Refrigeration Contractors Advisory Board.....	1905
---	------

**Texas Lottery Commission**

Instant Game Number 1505 "Mucho Cash Fiesta" .....	1906
Instant Game Number 1517 "3X Multiplier" .....	1910
Instant Game Number 1539 "Bonus Ball Bingo" .....	1916

**Texas Low-Level Radioactive Waste Disposal Compact Commission**

Notice of Receipt of Application for Importation of Waste and Import Agreement.....	1923
Notice of Receipt of Application for Importation of Waste and Import Agreement.....	1924

**Panhandle Regional Planning Commission**

Legal Notice.....	1924
-------------------	------

**Public Utility Commission of Texas**

Announcement of Application for State-Issued Certificate of Franchise Authority .....	1924
Award of RFP Number 473-13-00105 for an Evaluation, Measurement, and Verification Program .....	1924
Award of RFP Number 473-13-00137 to Provide Technical Consulting Services .....	1925
Notice of Application for a Service Provider Certificate of Operating Authority .....	1925
Notice of Application for Amendment to Certificated Service Area Boundary.....	1925
Notice of Application for Amendment to Certificated Service Area Boundary .....	1925
Notice of Application for Amendment to Service Provider Certificates of Operating Authority.....	1926
Notice of Application for Service Area Exception .....	1926
Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director .....	1926
Request for Comments.....	1926

**Supreme Court of Texas**

IN THE SUPREME COURT OF TEXAS.....	1927
------------------------------------	------

**Texas Department of Transportation**

Aviation Division - Request for Qualifications for Professional Services .....	1927
Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services .....	1928
Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services .....	1929

# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

---

The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

---

## Requests for Opinions

### RQ-1111-GA

#### Requestor:

The Honorable Elton R. Mathis  
Waller County Criminal District Attorney  
645 12th Street  
Hempstead, Texas 77445

Re: Whether counties operating under the County Road Department System may accept money from private entities in exchange for agreeing to repair or improve county roads designated by the private entities (RQ-1111-GA)

#### Briefs requested by March 28, 2013

### RQ-1112-GA

#### Requestor:

The Honorable John Smithee  
Chair, Committee on Insurance  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether the State of Texas has a legal obligation to pay unfunded losses that exceed the Texas Windstorm Insurance Association's ability to pay (RQ-1112-GA)

#### Briefs requested by March 28, 2013

### RQ-1113-GA

#### Requestor:

The Honorable Harvey Hilderbran  
Chair, Committee on Ways & Means  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether implements of husbandry used at a cattle feedlot qualify as equipment used in the "production of farm or ranch products" pursuant to Tax Code section 11.161 (RQ-1113-GA)

#### Briefs requested by March 28, 2013

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-201300957  
Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: March 4, 2013

◆ ◆ ◆

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

#### CHAPTER 155. RULES OF PROCEDURE SUBCHAPTER J. DISPOSITION OF CASE

##### 1 TAC §155.505

The State Office of Administrative Hearings (SOAH) proposes an amendment to §155.505, concerning Summary Disposition. The amendment is being proposed to clarify procedures concerning summary disposition of contested cases pending at SOAH.

Thomas H. Walston, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Walston also has determined that for the first five-year period the amendment is in effect the public benefit anticipated as a result of the amendment will be in providing clearer and more precise procedures for parties to file and respond to motions for summary disposition and for judges to rule on these motions. There will be no effect on small businesses as a result of enforcing the amendment, and there is no anticipated economic cost to individuals who are required to comply with the amendment.

There is no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code §2006.002, is required.

Written comments must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Debra Anderson, Paralegal, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, or by email at [debra.anderson@soah.state.tx.us](mailto:debra.anderson@soah.state.tx.us), or by facsimile to (512) 463-7791.

The amendment is proposed under Government Code, Chapter 2003, §2003.050 and §2003.903, which authorize SOAH to establish procedural rules for its hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The proposed amendment affects the Government Code, Chapters 2001 and 2003.

##### *§155.505. Summary Disposition.*

(a) Final decision or proposal for decision on summary disposition. The judge may issue a final decision or a proposal for decision on all or part of a contested case without an evidentiary hearing. Summary disposition shall be granted on all or part of a contested case

if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. [The evidence must show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.]

(b) Motions: deadlines, content, and format.

(1) A party may file a motion for summary disposition at any time after SOAH acquires jurisdiction over a case, but the motion [A motion for summary disposition] must be filed at least 30 days before the hearing on the merits, unless otherwise ordered by the judge.

(2) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition. [A motion shall include a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed.]

(3) The motion shall also separately state all material facts upon which the motion is based. Each [of the] material fact [facts] stated [to be undisputed] shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(4) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 14 days after you received this motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits. See SOAH's rules at 1 Texas Administrative Code §155.505. These rules are available on SOAH's public website." [A party's failure to comply with these requirements may constitute sufficient grounds for denial of the motion.]

(5) A party's motion may be denied for failure to comply with these requirements.

(c) Responses to Motions: deadlines, content, and format. [summary disposition evidence.]

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition. The response and opposing summary disposition evidence shall be filed within 14 days of receipt of the motion, unless otherwise ordered by the judge. [A party's motion for summary disposition may be based on pleadings, affidavits, materials obtained by discovery, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, or other admissible evidence.]

(2) The response shall include all arguments against the motion for summary disposition; any objections to the form of the motion; and any objections to the summary disposition evidence offered in support of the motion. [Relevant portions of materials obtained by



discovery may be relied upon to support or oppose a motion for summary disposition if:]

[(A) copies are filed with the motion or response; and]

[(B) a notice containing specific reference to the materials is served on all parties.]

(d) Summary disposition evidence. [Responses to motions: deadlines, content, and format.]

(1) Summary disposition evidence may include deposition transcripts, interrogatory answers and other discovery responses, pleadings, admissions, affidavits, materials obtained by discovery, matters officially noticed, stipulations, authenticated or certified public, business, or medical records, and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition. [A response to a motion shall be filed within 14 days of receipt of the motion.]

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts. Such evidence must be clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. [The response shall include a separate statement that:]

[(A) addresses each of the material facts contended by the moving party to be undisputed; and]

[(B) indicates whether the responding party agrees or disagrees that the facts are undisputed.]

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence. [The response shall set forth plainly and concisely any other material facts that the responding party contends are disputed.]

[(4) Each of the material facts claimed by the responding party to be disputed shall be followed by a clear and specific reference to the supporting evidence.]

[(5) The response shall also include objections to the form of the motion and to the evidence.]

(e) Proceedings on motions. [Movant's reply to response:]

(1) A judge may hold a hearing on a motion for summary disposition or rule on the motion without a hearing. [The movant's reply to the response shall be filed within seven days of receipt of the response.]

(2) If summary disposition is granted on all contested issues in a case, the judge shall close the record and prepare a final decision or proposal for decision as appropriate. The final decision or proposal for decision shall include a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered. [The reply shall include objections to the form of the response and to the evidence.]

(3) If summary disposition is granted on some but not all of the contested issues in a case, the judge shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The judge shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. Upon an evidentiary hearing of the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the judge shall include in the final decision or proposal for decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2013.

TRD-201300918

Thomas H. Walston

General Counsel

State Office of Administrative Hearings

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-4931



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 355. REIMBURSEMENT RATES

#### SUBCHAPTER J. PURCHASED HEALTH SERVICES

#### DIVISION 4. MEDICAID HOSPITAL SERVICES

##### 1 TAC §355.8066

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8066, concerning Hospital-Specific Limit Methodology.

##### Background and Justification

The hospital-specific limit is the maximum payment amount that a hospital may receive in reimbursement for the uncompensated cost of providing Medicaid-allowable services to individuals who are Medicaid-enrolled or uninsured. Section 355.8066 describes the methodology used to calculate the hospital-specific limit for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065, or in the Texas Healthcare Transformation and Quality Improvement Program (the Waiver), described in §355.8201.

There are three applications of the hospital-specific limit in the DSH and Waiver programs:

(1) For DSH and the Waiver, an interim hospital-specific limit is calculated to limit payments to participating hospitals during the program year.

(2) For DSH, a final hospital-specific limit is calculated three years after the program year, as part of the federally mandated DSH audit, to ensure that actual payments to the hospital during the program year did not exceed actual costs.

(3) For the Waiver, a reconciliation limit is calculated two years after the program year to ensure that actual payments to the hospital during the program year did not exceed actual costs.

HHSC proposes the following changes to §355.8066:

- Providing greater detail regarding the formulas used to calculate the hospital-specific limit.
- Describing the use of a survey to collect data from hospitals for use in calculating the hospital-specific limit.
- Revising the cost reporting period from which data is used to calculate the Medicaid cost-to-charge ratio and the per diem cost used in determining the interim hospital-specific limit. In particular, HHSC proposes using a single cost report that covers the hospital's fiscal year that ends in the calendar year two years prior to the end of the program year. HHSC proposes this change because the use of one cost report is less burdensome for hospitals and HHSC staff, without compromising the integrity of the data used to estimate a hospital's uncompensated costs during the program year.
- Removing supplemental payments and uncompensated-care payments from the calculation of the interim hospital-specific limit and including these payments only in the determination of the final hospital-specific limit. HHSC proposes this change to simplify the calculation and enhance clarity in the rule. Since DSH payments precede uncompensated-care waiver payments during each program year, HHSC can ensure that total payments from these two sources will not exceed the interim hospital-specific limit.
- Imposing a 30-day deadline for hospitals to complete and submit the survey that is used to collect data for calculating the hospital-specific limit, unless a hospital's written request for an extension of time is granted by HHSC. This change is proposed to instill consistency and certainty in the timeline for completing the hospital-specific limit calculations.

#### Section-by-Section Summary

Proposed §355.8066(a) removes language regarding potential conflicts with §355.8065(f) because §355.8065 has been amended to remove the conflicting provision.

Proposed §355.8066(b)(5) adds a definition of "DSH survey" that describes the tool used by HHSC to collect data from DSH hospitals that is used in the hospital-specific limit calculation.

Proposed §355.8066(b)(6) clarifies that the term "dually eligible patient" means someone enrolled in both Medicare and Medicaid.

HHSC proposes removing the definition of "low-income days," currently §355.8066(b)(10), because that term is not used in the amended rule.

Proposed §355.8066(b)(12) adds a definition of "Medicaid cost-to-charge ratio (inpatient and outpatient)" to describe a ratio derived from a hospital's cost report and calculated for each ancillary cost center.

HHSC proposes removing the definition of "Medicaid shortfall," currently §355.8066(b)(14), because that term is not used in the amended rule.

Proposed §355.8066(b)(15) adds a definition of "non-DSH survey" that describes the tool used by HHSC to collect data from non-DSH hospitals that is used in the hospital-specific limit calculation.

Proposed §355.8066(b)(16) replaces the phrase "Medicaid shortfall" with the phrase "hospital-specific limit" because the term Medicaid shortfall is not used in the amended rule.

HHSC proposes removing the definition of the term "ratio of cost to charges (inpatient and outpatient)," currently §355.8066(b)(17), because the term has been replaced by the term "Medicaid cost-to-charge ratio (inpatient and outpatient)," which is proposed in §355.8066(b)(12).

Proposed §355.8066(b)(20) revises the definition of "total state and local payments" to remove the reference to payments for outpatient care for consistency with the definition of the term in §355.8065.

HHSC proposes removing the current §355.8066(c) in its entirety and replacing it with a more detailed description of the methodology HHSC uses to calculate the interim and final hospital-specific limits.

Proposed §355.8066(c)(1) describes the methodology HHSC will use for calculating the interim hospital-specific limit. In general, the interim hospital-specific limit is calculated by subtracting total payments received by the hospital during the data year, from all payor sources, from total hospital costs associated with eligible inpatient and outpatient services provided to Medicaid recipients and the uninsured.

Proposed §355.8066(c)(1)(A) addresses uninsured charges and payments and explains the data that the hospital must provide on the survey instrument.

Proposed §355.8066(c)(1)(B) addresses Medicaid charges and payments and explains the claims data that HHSC will obtain from Medicaid contractors. This paragraph differs from the current rule because language is added to clarify that HHSC will include claims for which the hospital received payment from a third-party payor for a Medicaid-enrolled patient. This change is proposed to comply with federal guidance on the issue.

Proposed §355.8066(c)(1)(C) explains how HHSC will use the information obtained from the hospital and Medicaid contractors to calculate total costs. The proposed methodology differs from the current methodology because HHSC proposes to use data from a single cost report for calculating each hospital's Medicaid cost per day for routine cost centers and Medicaid inpatient and outpatient cost-to-charge ratio. The paragraph also provides more detail than the current rule on calculation of these costs.

Proposed §355.8066(c)(1)(D) describes the methodology for reducing total costs by total payments from all sources. The proposed methodology differs from the current rule because HHSC proposes not reducing the hospital's total costs by the amount of supplemental or waiver payments.

Proposed §355.8066(c)(2) describes the methodology HHSC will use for calculating the final hospital-specific limit. The proposed methodology does not differ from the current methodology in any substantive way, but the proposed language provides more detail than the current rule.

Proposed §355.8066(d) establishes a 30-day deadline for a hospital to submit the survey after the date of HHSC's written request to the hospital for completion of the survey. The subsection also describes the process for requesting an extension and the consequences of failing to submit the survey by the stated deadline.

The proposed rule includes other technical corrections, numbering revisions, and non-substantive changes to make the rule more readable and understandable.

## Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed section. Local governments will not incur additional costs.

## Small Business and Micro-Business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

## Public Benefit

Pam McDonald has determined that for each of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the amended section is that HHSC's methodology for calculating the hospital-specific limit is more detailed and transparent. The rule also provides deadlines for survey submittal and consequences of failing to submit the survey by the stated deadline to provide certainty to this process.

## Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

## Public Hearing

HHSC will conduct a public hearing on Tuesday, March 19, 2013, beginning at 9:00 a.m., to receive comments on the proposed amendments to §355.8066. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

## Public Comment

Written comments on the proposal may be submitted to Diana Miller in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1436, or by e-mail to [costinformation@hhsc.state.tx.us](mailto:costinformation@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

### *§355.8066. Hospital-Specific Limit Methodology.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate a hospital-specific limit for each Medicaid hospital participating in either the Disproportionate Share Hospital (DSH) program, described in §355.8065 of this title (relating to Disproportionate Share Hospital [(DSH)] Reimbursement Methodology), or in the Texas Healthcare Transformation and Quality Improvement Program (the waiver), described in §355.8201 of this title (relating to Waiver Payments to Hospitals). [If the language contained in this section conflicts with language contained in §355.8065(f) of this title, the language in this section will govern the calculation of the hospital-specific limit.]

#### (b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payor [payer].

(2) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(3) Data year--A 12-month period that is two years before the program year from which HHSC will compile data to determine DSH or uncompensated-care waiver program qualification and payment.

(4) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(5) DSH survey--The HHSC data collection tool completed by DSH hospitals and used by HHSC to calculate the interim and final hospital-specific limit.

(6) [(5)] Dually eligible patient--A patient who is simultaneously enrolled in [eligible for] Medicare and Medicaid.

(7) [(6)] HHSC--The Texas Health and Human Services Commission or its designee.

(8) [(7)] Hospital-specific limit--The maximum payment amount that a hospital may receive in reimbursement for the cost of providing Medicaid-allowable services to individuals who are Medicaid eligible or uninsured. The term does not apply to payment for costs of providing services to individuals who have third-party coverage; costs associated with pharmacies, clinics, and physicians; or costs associated with Delivery System Reform [and] Incentive Payment projects.

(A) Interim hospital-specific limit--Applies to payments that will be made during the program year and is calculated as described in subsection (c)(1) [- (3)] of this section using cost and payment data from the data year.

(B) Final hospital-specific limit--Applies to payments made during a prior program year and is calculated as described in subsection (c)(2) [(4)] of this section using actual cost and payment data from that period.

(9) [(8)] Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(10) [(9)] Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness, defined in §1905(i) of the Social Security Act.

[(10) Low-income days--Number of inpatient days attributed to indigent patients. HHSC will calculate low income days by multiplying a hospital's total inpatient census days for the DSH data year by its low income utilization rate as calculated in §355.8065(d)(2) of this title.]

(11) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(12) Medicaid cost-to-charge ratio (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio calculated for each ancillary cost center that covers all applicable hospital costs and charges relating to inpatient and outpatient care for that cost center. This ratio is used in calculating the hospital-specific limit and does not distinguish between payor types such as Medicare, Medicaid, or private pay.

(13) [(12)] Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(14) [(13)] Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(15) Non-DSH survey--The HHSC data collection tool completed by non-DSH hospitals and used by HHSC to calculate the interim and final hospital-specific limit for use in determining uncompensated care waiver payments.

[(14) Medicaid shortfall--The unreimbursed cost of Medicaid inpatient and outpatient hospital services furnished to Medicaid patients.]

(16) [(15)] Outpatient charges--Amount of gross outpatient charges related to the applicable data year and used in the calculation of the hospital specific limit [Medicaid shortfall].

(17) [(16)] Program year--The 12-month period beginning October 1 and ending September 30. The period corresponds to the waiver demonstration year.

[(17) Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio is used in calculating the hospital-specific limit and does not distinguish between payer types such as Medicare, Medicaid, or private pay.]

(18) The waiver--The Texas Healthcare Transformation and Quality Improvement Program, a Medicaid demonstration waiver under §1115 of the Social Security Act that was approved by CMS on December 12, 2011. Pertinent to this section, the waiver establishes a funding pool to assist hospitals with uncompensated-care costs.

(19) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payor [payer].

(20) Total state and local payments--Total amount of state and local payments that a hospital received for inpatient [and outpatient] care during the data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(21) Uncompensated-care waiver payments--Payments to hospitals participating in the waiver that are intended to defray the uncompensated costs of eligible services provided to eligible individuals.

(22) Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by CMS.

(c) Calculating a hospital-specific limit. Using information from each hospital's DSH or non-DSH survey, Medicaid cost report and from HHSC's Medicaid contractors, HHSC will determine the hospital's interim hospital-specific limit in compliance with paragraph (1) of this subsection. The interim hospital-specific limit will be used for both DSH and uncompensated care waiver interim payment determinations. Final hospital-specific limits will be determined in compliance with paragraph (2) of this subsection.

(1) Interim Hospital-Specific Limit.

(A) Uninsured charges and payments.

(i) Each hospital will report in its survey its inpatient and outpatient charges for services that would be covered by Medicaid that were provided to uninsured patients discharged during the data year. In addition to the charges in the previous sentence, for DSH calculation purposes only, an IMD may report charges for Medicaid-allowable services that were provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64.

(ii) Each hospital will report in its survey all payments received during the data year, regardless of when the service was provided, for services that would be covered by Medicaid and were provided to uninsured patients.

(I) For purposes of this paragraph, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under §1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause.

(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

(B) Medicaid charges and payments.

(i) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.

(I) HHSC will include, as appropriate, charges and payments for:

(-a-) claims associated with the care of dually eligible patients, including Medicare charges and payments;

(-b-) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation;

(-c-) outpatient claims associated with the Women's Health Program; and

(-d-) claims for which the hospital received payment from a third-party payor for a Medicaid-enrolled patient.

(II) HHSC will exclude charges and payments for:

(-a-) claims for services not covered by Medicaid, including:

(-1-) claims for the Children's Health Insurance Program; and

(-2-) inpatient claims associated with the Women's Health Program; and

(-b-) claims submitted after the 95-day filing deadline.

(ii) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid cost settlement payment or recoupment amounts attributable to the cost report period determined in subparagraph (C)(i) of this paragraph.

(iii) Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.

(iv) Each hospital will report on the survey the inpatient and outpatient Medicaid days, charges and payment data for out-of-state claims adjudicated during the data year.

(v) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate Medicaid payments following a rebasing or other change in reimbursement rates under other sections of this division.

(C) Calculation of in-state and out-of-state Medicaid and uninsured total costs for the data year.

(i) Cost report period. HHSC will use information from the Medicaid cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year for the calculations described in clauses (ii)(I) and (iii)(I) of this subparagraph. For example, for program year 2013, the cost report year is the provider's fiscal year that ends between January 1, 2011, and December 31, 2011.

(I) For hospitals that do not have a full year cost report that meets this criteria, a partial year cost report for the hospital's fiscal year that ends during the calendar year that falls two years before the end of the program year will be used if the cost report covers a period greater than or equal to six months in length.

(II) The partial year cost report will not be pro-rated. If the provider's cost report that ends during this time period is less than six months in length, the most recent full year cost report will be used.

(ii) Determining inpatient routine costs.

(I) Medicaid inpatient cost per day for routine cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable inpatient costs by the inpatient days for each routine cost center to determine a Medicaid inpatient cost per day for each routine cost center.

(II) Inpatient routine cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the Medicaid inpatient cost per day for each routine cost center from subclause (I) of this clause times the number of inpatient days for each routine cost center from the data year to determine the inpatient routine cost for each cost center.

(III) Total inpatient routine cost. For each Medicaid payor type and the uninsured, HHSC will sum the inpatient routine costs for the various routine cost centers from subclause (II) of this clause to determine the total inpatient routine cost.

(iii) Determining inpatient and outpatient ancillary costs.

(I) Inpatient and outpatient Medicaid cost-to-charge ratio for ancillary cost centers. Using data from the Medicaid cost report, HHSC will divide the allowable ancillary cost by the sum of the inpatient and outpatient charges for each ancillary cost center to determine a Medicaid cost-to-charge ratio for each ancillary cost center.

(II) Inpatient and outpatient ancillary cost center cost. For each Medicaid payor type and the uninsured, HHSC will multiply the cost-to-charge ratio for each ancillary cost center from subclause (I) of this clause by the ancillary charges for inpatient claims and the ancillary charges for outpatient claims from the data year to determine the inpatient and outpatient ancillary cost for each cost center.

(III) Total inpatient and outpatient ancillary cost. For each Medicaid payor type and the uninsured, HHSC will sum the ancillary inpatient and outpatient costs for the various ancillary cost centers from subclause (II) of this clause to determine the total ancillary cost.

(iv) Determining total Medicaid and uninsured cost. For each Medicaid payor type and the uninsured, HHSC will sum the result of clause (ii)(III) of this subparagraph and the result of clause (iii)(III) of this subparagraph plus organ acquisition costs to determine the total cost.

(D) Calculation of the interim hospital-specific limit.

(i) Total hospital cost. HHSC will sum the total cost by Medicaid payor type and the uninsured from subparagraph (C)(iv) of this paragraph to determine the total hospital cost for Medicaid and the uninsured.

(ii) Interim hospital-specific limit.

(I) HHSC will reduce the total hospital cost under clause (i) of this subparagraph by total payments from all payor sources for inpatient and outpatient claims, including but not limited to, graduate medical services and out-of-state payments.

(II) HHSC will not reduce the total hospital cost under clause (i) of this subparagraph by supplemental payments (including upper payment limit payments), or uncompensated-care waiver payments to determine the interim hospital-specific limit.

(E) Inflation adjustment.

(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor.

(ii) HHSC will trend each specific-specific limit from the midpoint of the data year to the midpoint of the program year.

[(e) Calculating a hospital-specific limit. Using information from each hospital's DSH or uncompensated-care waiver application and from HHSC's Medicaid contractors, HHSC will determine the hospital's interim hospital-specific limit in compliance with paragraphs (1) - (3) of this subsection. Final hospital-specific limits will be determined for DSH hospitals only in compliance with paragraph (4) of this subsection.]

[(1) HHSC will calculate a hospital's interim hospital-specific limit by adding the hospital's net uninsured costs for the data year and its Medicaid shortfall for the data year, both adjusted for inflation.]

[(2) HHSC will determine the individual components of the hospital-specific limit as follows:]

[(A) Uninsured costs.]

[(i) Each hospital will report in its application its inpatient and outpatient charges for services that would be covered by Medicaid that were provided to uninsured patients discharged during the data year. In addition to the charges in the previous sentence, an IMD may report charges for Medicaid-allowable services that were provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64.]

[(ii) Each hospital will report in its application all payments received for services that would be covered by Medicaid that are provided to uninsured patients discharged during the data year.]

[(i) For purposes of this section, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under §1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (H) of this clause.]

[(H) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.]

[(iii) HHSC will convert uninsured charges to uninsured costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.]

[(iv) HHSC will subtract all payments received under clause (ii) of this subparagraph from the uninsured costs under clause (iii) of this subparagraph, resulting in net uninsured costs.]

[(B) Medicaid shortfall.]

[(i) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.]

[(i) HHSC will include as appropriate charges and payments for:]

[(a) claims associated with the care of dually eligible patients; including Medicare charges and payments:]

[(b) claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation; and]

[(c) outpatient claims associated with the Women's Health Program.]

[(H) HHSC will exclude charges and payments for:]

[(a) claims for services not covered by Medicaid, including:]

[(1) claims for the Children's Health Insurance Program; and]

[(2) inpatient claims associated with the Women's Health Program; and]

[(b) claims submitted after the 95-day filing deadline.]

[(ii) Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.]

[(iii) HHSC will convert the Medicaid charges to Medicaid costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.]

[(iv) HHSC will subtract each hospital's Medicaid payments, including supplemental payments (including upper payment limit payments), uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians), and graduate medical education payments, from its Medicaid costs and apply cost settlements (payments or recoupments) applicable to the DSH data year.]

[(v) If a hospital's payments are less than its costs, the hospital has a positive Medicaid shortfall. If a hospital's payments are greater than its costs, the hospital has a negative Medicaid shortfall. A negative Medicaid shortfall will still be used in the calculation in paragraph (1) of this subsection.]

[(vi) HHSC may apply an adjustment factor to Medicaid payment data to more accurately approximate the Medicaid shortfall following a rebasing or other change in reimbursement rate under other sections of this division.]

[(C) Inflation adjustment.]

[(i) HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor as defined in subsection (b) of this section.]

[(ii) HHSC will use the inflation update factors for the period beginning at the midpoint of each data year to the midpoint of the program year.]

[(iii) HHSC will multiply each hospital's sum of the net uninsured costs and Medicaid shortfall by the inflation update factor to obtain its interim hospital-specific limit.]

[(3) Ratio of cost-to-charges. HHSC will calculate the ratio of cost-to-charges used in setting hospital-specific limits in conformity with the following conditions and procedures:]

[(A) HHSC will convert to cost the portion of the total Medicaid charges related to adjudicated claims that are allocated to the various cost centers of the hospital. The ratio is derived by allocating allowable charges to each cost center.]

[(B) HHSC will calculate the ratio of cost-to-charges for the respective cost centers using information from the appropriate worksheets from one or both of the hospital's Medicaid cost reports corresponding to the data year.]

(2) [(4)] Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in

paragraph (1)(A) - (D) [paragraphs (2) and (3)] of this subsection, except that HHSC will:

(i) use information from the hospital's Medicaid cost report(s) that cover the program year and from cost settlement payment or recoupment amounts attributable to the program year for the calculations described in paragraphs (1)(C)(ii)(I) and (1)(C)(iii)(I) of this subsection. If a hospital has two or more Medicaid cost reports that cover the program year, the data from each cost report will be pro-rated based on the number of months from each cost report period that fall within the program year;

(ii) include supplemental payments (including upper payment limit payments) and uncompensated-care waiver payments (excluding payments associated with pharmacies, clinics, and physicians) attributable to the hospital for the program year when calculating the total payments to be subtracted from total costs as described in paragraph (1)(D)(ii) of this subsection;

(iii) [(+)] use the hospital's actual charges and payments for services described in paragraph (1) [(2)] (A) and (B) of this subsection provided to Medicaid-eligible and uninsured patients during the program year; and

(iv) [(+)] include charges and payments for claims submitted after the 95-day filing deadline for Medicaid-allowable services provided during the program year unless such claims were submitted after the Medicare filing deadline.

(B) For payments to a hospital under the DSH program, the final hospital-specific limit will be calculated at the time of the independent audit conducted under §355.8065(o) of this title.

(d) Due date for DSH or non-DSH survey.

(1) HHSC Rate Analysis must receive a hospital's completed survey no later than 30 calendar days from the date of HHSC's written request to the hospital for the completion of the survey, unless an extension is granted as described in paragraph (2) of this subsection.

(2) HHSC Rate Analysis will extend this deadline provided that HHSC receives a written request for the extension by hand delivery, U.S. mail, or special mail delivery no later than 30 calendar days from the date of the request for the completion of the survey.

(3) The extension gives the requester a total of 45 calendar days from the date of the written request for completion of the survey.

(4) If a deadline described in paragraph (1) or (3) of this subsection is a weekend day, national holiday, or state holiday, then the deadline for submission of the completed survey is the next business day.

(5) HHSC will not accept a survey or request for an extension that is not received by the stated deadline. A hospital whose survey or request for extension is not received by the stated deadline will be ineligible for DSH or uncompensated-care waiver payments for that program year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300955

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 424-6900



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES

##### SUBCHAPTER H. INCOME AND RENT LIMITS

###### 10 TAC §§10.1001 - 10.1003

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter H, §§10.1001 - 10.1003, concerning Income and Rent Limits. The purpose of the proposed new sections is to codify the income and rent limits applicable to the multifamily programs administered by the Department. The proposed sections define Multifamily Tax Subsidy Program Imputed Income Limit, prescribe the rent limits applicable to tax exempt bond properties, and amend existing Land Use Restriction Agreements in conformance with the rules.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased compliance due to the clarity and financial stability the new sections provide. There will not be any economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from March 15, 2013 to April 15, 2013, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email at [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us); or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. APRIL 15, 2013.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§10.1001. Purpose.

The purpose of this subchapter is to codify the income and rent limits applicable to the multifamily programs administered by the Texas Department of Housing and Community Affairs (the "Department"). The

Department may, but is not required to, calculate and provide income and rent limits for programs administered by the Department. Income and rent limits will be derived from data released by Federal agencies including the U.S. Department of Housing and Urban Development (HUD).

§10.1002. Definitions.

(a) Unless otherwise defined here terms have the meaning in §10.3 of this chapter (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit-Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

(1) In the case of a unit which does not have a separate bedroom, 1 individual; or

(2) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

§10.1003. Tax Exempt Bond Properties.

(a) The Land Use Restriction Agreement (LURA) for some, but not all, Tax Exempt Bond properties restricts the amount of rent the Development Owner is permitted to charge. If the LURA restricts rent limits, rents will be calculated as 30 percent of the applicable Multifamily Tax Subsidy Program Imputed Income Limit, but never less than the limit taking into consideration the gross rent floor provided in accordance with Revenue Procedure 94-57.

(b) Tax Exempt Bond LURAs are hereby amended to be consistent with this section.

(c) The Department will make available a memorandum in a recordable form reflecting the applicable rent limits in accordance with this section and the legal description of the affected property. The owner of the property will bear any costs associated with recording such memorandum in the real property records for the county in which the property is located.

(d) Nothing in this section prevents a Development Owner from pursuing a Material Amendment to their LURA in accordance with the procedures found in §10.405 of this chapter (relating to Amendments and Extensions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300950

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-3916



## **TITLE 16. ECONOMIC REGULATION**

### **PART 2. PUBLIC UTILITY COMMISSION OF TEXAS**

## **CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS**

### **SUBCHAPTER G. SUBMETERING**

#### **16 TAC §25.142**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.142, relating to Submetering for Apartments, Condominiums, and Mobile Home Parks. The proposed amendment will correct the cross-reference to the Texas Utilities Code in the rule. Project Number 40801 is assigned to this proceeding.

Maria Faconti, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Faconti has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will derive from the consistency achieved in the P.U.C. Substantive Rules as a result of having an accurate cross-reference to the Texas Utilities Code, eliminating public confusion. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Faconti has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on April 3, 2013. The request for a public hearing must be received within 14 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 38 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 40801.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Texas Utilities Code §184.014.



§25.142. *Submetering for Apartments, Condominiums, and Mobile Home Parks.*

(a) Purpose. This section implements Texas Utilities Code §184.014 [§184.052].

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300951

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 936-7223



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 61. COMBATIVE SPORTS

#### 16 TAC §§61.20, 61.40, 61.46, 61.47

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 61, §§61.20, 61.40, 61.46, and 61.47, regarding the combative sports program. The proposed rule amendments implement changes recommended by the Medical Advisory Committee at its meeting on January 25, 2013, and by Department staff to insure the safety of contestants; update and clarify existing rules; improve the regulation of the industry; and simplify and eliminate unnecessary rules as directed by the Texas Commission of Licensing and Regulation (Commission).

The proposed amendments to §61.20(d) include a general licensing requirement that each applicant for a contestant license submit a form consenting to drug testing. Requiring submission of drug-testing consent forms from all applicants will ensure that, when the Executive Director authorizes drug testing for a designated combative sports event, all contestants will have completed the documents required to facilitate the process.

The proposed amendments to §61.40(b)(2) and (3) strike language listing the information a promoter must provide when requesting departmental approval for a fight card. The amendment would instead require that approval be obtained "in a manner prescribed by the department". The amendment is intended to simplify the rule and provide greater flexibility to promoters and to the Department in determining what information will be necessary for fight card approval.

The proposed amendments to §61.46(4) add the term "medical suspensions" to the types of recommendations that ringside physicians may make during a post-bout examination.

The Department proposes to strike §61.46(4)(A) - (D), which currently authorize the ringside physician to medically suspend a contestant based upon the severity of cuts or number of knock-outs, and move the criteria for medical suspensions to §61.47, which contains all "pre" and "post" bout medical suspension criteria. The proposed amendment will simplify Chapter 61 by mak-

ing the rules easier to access and providing greater clarity to the industry.

The proposed amendments to §61.47(p) expand the circumstances under which a person shall be considered in violation of the prohibition against using drugs, alcohol, stimulants, or injections before or during a bout, such as refusing to provide a urine or blood sample or diluting a sample.

The proposed amendments to §61.47(q) state that a contestant with a positive test for any of the drugs listed in §61.47(q)(1) - (14) will receive an automatic 90-day medical suspension in addition to administrative penalties and sanctions. The 90-day medical suspension is proposed to protect a contestant from potential injury by preventing the contestant from subsequently engaging in combative sports events while still under the influence or effect of the banned substance. The proposed amendment to §61.47(q)(3) adds "phencyclidines" which are also known as "hallucinogens" and are more commonly referred to as "PCP". The proposed amendment to §61.47(q)(4) adds "barbiturates and benzodiazepines" which are more commonly known as "depressants" or "psychotropic drugs" to the list of prohibited substances for which tests are currently administered.

In addition, §61.47(q)(11) is amended to expand the term "Beta-2 agonists (asthma medications)" to allow the use of salbutamol at a maximum dose of 1600 micrograms over 24 hours and salmeterol by inhalation. This amendment will enable contestants taking a common but effective asthma medication to continue their asthma medication in doses proven not to provide an unfair advantage.

The proposed amendment to §61.47(q)(12) changes the term "anti-estrogenic agents" to "hormones and metabolic modulators" to encompass all varieties of anti-estrogenic agents.

New §61.47(q)(14) is proposed to ensure that designer drugs, discontinued drugs, drugs under pre-clinical development, and drugs approved only for veterinary use are not approved. Paragraphs (11), (12), and (14) of §61.47(q) are included in the World Anti-Doping Agency 2013 Prohibited list, which sets industry standards and which this proposed rule is designed to mirror.

Proposed amendments to §61.47(s) clarify that while medical records submitted to the Department are confidential and shall be used only to determine a contestant's ability to participate in a bout, the contestant may nevertheless consent to release the medical information to designated persons.

Proposed §61.47(u)(1) - (4) have been moved from §61.46 and list the medical conditions under which contestants shall automatically receive rest periods, medical suspensions or medical disqualifications. In addition, the Department amends the calculations for mandatory rest after bouts to "three days of rest for each round fought with no less than a seven day mandatory minimum rest period". This change is proposed to correspond to current industry standards for calculating mandatory rest periods. The Medical Advisory Committee recommends that the term "cut" in §61.47(u)(1) be changed to "medical condition" to include not only lacerations but also injuries such as sprains and fractures that may also require medical suspension to protect the contestant.

The Department proposes to add new subsection (v) to §61.47 to state that a contestant who tests positive for the listed drugs will automatically receive a 90-day medical suspension. This proposed amendment will protect a contestant from potential in-

juries in a future-scheduled bout as a result of still being under the influence or the effect of the banned substance for which the contestant tested positive.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed rules are in effect there will be no foreseeable implications relating to cost or revenues of state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be that the proposed rules will provide greater clarity and, therefore, certainty in the administration of the combative sports program. In addition, expanding the types of drugs that will be tested for will deter contestants from using banned substances and will also ensure that contestants who do not use banned substances will not be placed at a competitive disadvantage to contestants who use banned substances. Further, there will be increased safety for contestants who are taking asthma medications who may have previously ceased taking their asthma medication to avoid testing positive for an illegal substance, thereby compromising their health.

There will be no economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed under Texas Government Code, Chapter 2006. The agency has also determined that the rules will have no adverse economic effect on small businesses, therefore, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposal may be submitted by mail to Shanna Dawson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, by facsimile to (512) 475-3032, or electronically to [erule@tdlr.texas.gov](mailto:erule@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the proposal.

#### *§61.20. General Licensing Requirements.*

(a) - (c) (No change.)

(d) Each applicant must submit a completed application or renewal form, a contestant consent form for drug testing as required by the department, and pay the appropriate fees.

(e) (No change.)

#### *§61.40. Responsibilities of the Promoter.*

(a) (No change.)

(b) A promoter shall:

(1) (No change.)

(2) Provide the department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written department approval ~~[from the department]~~ to promote the event ~~before~~ ~~[prior to]~~ advertising or selling tickets. Promoters who have cancelled or

postponed two events in sequence after having obtained ~~department~~ ~~[departmental]~~ approval for the events will be required to pay the permit fee set out in §61.80(c) at the time the 21 day notice is filed. The fee will not be refunded.

(3) Obtain written ~~department~~ ~~[departmental]~~ approval for the fight card at least 10 working days before the event date in a manner prescribed by the department. The request shall contain the full legal name, address, date-of-birth, Texas contestant license number, Federal Identification number, weight, previous fight record (by supplying current results from the contestant's boxing registry recognized by the Professional Boxing Safety Act of 1996, 15 USC §§6301-6313 or from Mixed Martial Arts, LLC the national registry for MMA contestants), and number of rounds to be fought for each contestant. In addition, the department may require submission of certified birth certificates or other official evidence of identification.

(4) - (19) (No change.)

(c) - (f) (No change.)

#### *§61.46. Responsibilities of Ringside Physicians.*

Ringside physicians shall perform the following duties:

(1) perform medical examinations on contestants at the weigh-in to include a review of a contestant's answers to medical questions on the application. Only the contestant, his manager, his chief second, the ringside physician, and ~~department~~ ~~[Department]~~ representatives are allowed in the examination room during the physical;

(2) remain at ringside at all times during the scheduled bouts;

(3) immediately examine a contestant who suffers a knock-out, concussion, or other head injury; and

(4) conduct a post-contest ~~[post contest]~~ examination that includes the physician's recommendations for rest periods, medical suspensions, medical disqualification, and any other exam results. Results of the post contest examination shall be reported to the department ~~[Department]~~ within one hour after an event. ~~[A contestant shall automatically receive medical suspensions/rest periods for the following:]~~

~~[(A) cut--Medical suspension time based on physician's recommendation.]~~

~~[(B) technical knockout--Minimum of 30-day medical suspension.]~~

~~[(C) knockout--60-day minimum medical suspension for the first knockout. If a contestant has had two knockouts within 12 months, he shall be medically suspended for a minimum of 120 days. If he has had three knockouts within 12 months, or three consecutive knockouts, he will be medically disqualified from further competition.]~~

~~[(D) mandatory rest--All contestants shall receive a mandatory rest period as recommended by the ringside physician.]~~

#### *§61.47. Responsibilities of Contestants.*

(a) - (n) (No change.)

(o) The administration or use of any drugs, alcohol, stimulants, or injections in any part of the body, either before or during a bout to or by a contestant is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the executive director authorizes the contestant to use the drug. A ~~[If a]~~ contestant ~~[is]~~ taking prescribed or over the counter medication~~;~~ he/she must inform the executive director of such usage at least 24 hours prior to the bout.

(p) A person who applies for or holds a license as a contestant shall provide a urine specimen or blood sample for drug testing

either before or after the bout, if directed by the executive director or his designee. The applicant or licensee is responsible for paying the costs of the drug screen. A positive test, refusal to provide a sample, failure to comply with the testing process, or attempting to substitute, dilute, mask or adulterate a sample during collection shall be considered a violation of subsection (o) and will result in an automatic 90 day medical suspension and may also result in administrative penalties and sanctions.

(q) A positive test (which has been confirmed by a laboratory authorized by the executive director or his designee) for any of the following substances shall be conclusive evidence of a violation of subsection (o) and will result in an automatic 90 day medical suspension and may also result in administrative sanctions or monetary penalties or both:

- (1) Stimulants;
- (2) Narcotics;
- (3) Phencyclidines;
- (4) Barbiturates and Benzodiazepines;
- (5) [(3)] Cannabinoids (marijuana);
- (6) [(4)] Anabolic agents (exogenous and endogenous);
- (7) [(5)] Peptide hormones;
- (8) [(6)] Masking agents;
- (9) [(7)] Diuretics;
- (10) [(8)] Glucocorticosteroids;

(11) Beta-2 agonists (including both optical isomers where relevant) are prohibited except salbutamol (maximum 1600 micrograms over 24 hours), formoterol (maximum 36 micrograms over 24 hours) and salmeterol when taken by inhalation in accordance with the manufacturers' recommended therapeutic regimen;

(12) Hormones and Metabolic Modulators;

[(9) Beta--2 agonists (asthma medications)]

[(10) Anti-estrogenic agents]

(13) [(11)] Alcohol; or

(14) Any pharmacological substance not addressed in subsection (q) that is not currently approved by any governmental regulatory health authority for human therapeutic use such as drugs under pre-clinical or clinical development or discontinued; or designer drugs; or substances approved only for veterinary use.

(r) Failure to disclose the use of a substance described in subsection (q) constitutes a violation of subsection (o).

(s) [(#)] As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a bout. All medical records submitted to the department, without the contestant's consent to release, are confidential and shall be used only by the executive director or his representative for the purpose of ascertaining the contestant's ability to be licensed, or participate in a bout.

(t) After the bout, contestants shall undergo a post-contest examination by a ringside physician.

(u) Based upon the post-contest examination, contestants shall automatically receive rest periods, medical suspensions, or medical disqualifications for the following:

(1) Medical condition--medical suspension will be based upon the physician's recommendation;

(2) Technical knockout--30 day minimum medical suspension;

(3) Knockout:

(A) First knockout--60 day minimum medical suspension;

(B) Two knockouts within twelve months--120 days minimum medical suspension;

(C) Three knockouts within twelve months or three consecutive knockouts--medical disqualification from further competition; and

(4) Mandatory rest--all contestants shall receive a mandatory rest period calculated as three days of rest for each round fought with no less than a seven day mandatory minimum rest period.

(v) A contestant who tests positive for a drug listed under subsection (q) shall automatically receive a 90 day medical suspension.

(w) [(s)] Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the department. A [(f)] contestant who disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician, or a disqualification or suspension set by the department, [(h)] may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the department receives a written request from the contestant or his manager.

(x) [(t)] The following are gender specific provisions:[-]

(1) Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring.

(2) Female contestants:

(A) Must wear garments that cover their breasts;

(B) Shall submit to a pregnancy test at weigh-in;

(C) Will be disqualified by a positive pregnancy test; and[-]

(D) May wear breast protection plates.

(y) [(#)] Contestants must attend the referee's rules meeting conducted prior to the first bout of an event.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300932

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-4879

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

## CHAPTER 101. DENTAL LICENSURE

### 22 TAC §§101.1 - 101.7, 101.9

The State Board of Dental Examiners (Board) proposes amendments to §101.1, concerning General Qualifications for Licensure; §101.2, concerning Licensure by Examination; §101.3, concerning Licensure by Credentials; §101.4, concerning Temporary Licensure by Credentials; §101.5, concerning Staggered Dental Registrations; §101.6, concerning Licensing for Military Spouses; §101.7, concerning Retired License Status; and §101.9, concerning Criminal History Evaluation Letter. The proposed amendments to Chapter 101 clarify the Board's considerations when reviewing an application for licensure and reconcile inconsistent language throughout Chapters 101 and 103.

Mr. Glenn Parker, Executive Director, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amendments.

Mr. Parker has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be consistency and clarity in the requirements for dental licensure in the state of Texas. There will be no foreseen effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to General Counsel, Julie Hildebrand, at [julie@tsbde.texas.gov](mailto:julie@tsbde.texas.gov) or by mail to Julie Hildebrand, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be faxed to (512) 463-7452. To be considered, all written comments must be received by the State Board of Dental Examiners no later than 30 days from the date that the amendments are published in the *Texas Register*.

The amendments are proposed under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorizes the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

#### *§101.1. General Qualifications for Licensure.*

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the State Board of Dental Examiners (Board) as required by the Dental Practice Act and Board rules [law].

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board proof satisfactory to the Board that the applicant:

- (1) Is at least 21 years of age;
- (2) Is of good moral character and professional fitness, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license in any jurisdiction, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, [and] integrity, and ability;
- (3) Has successfully completed a current course in basic life support;

(4) Has taken and passed the jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(5) Has paid all application, examination and licensing fees required by the Dental Practice Act [law] and Board rules [and regulations]; and[;]

(6) Has submitted fingerprints for the retrieval of criminal history record information. [Beginning January 1, 2009, has submitted proof of having applicant's fingerprints collected for the required national fingerprint criminal records check.]

(d) Applications for licensure must be delivered to the office of the [State] Board [of Dental Examiners].

(e) An application for licensure is filed with the Board when it is actually received, date-stamped, and logged-in by the Board along with all required documentation and fees. An incomplete application for licensure and fee will be returned to the applicant [within three working days] with an explanation of additional documentation or information needed.

(f) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions. [In the event a potential applicant is uncertain whether he or she is qualified according to rule and law for licensure as a dentist, prior to taking the clinical examination, a written request may be submitted by the potential applicant with all proof required other than clinical examination scores. The Board will review the information and advise the applicant whether he or she is qualified for licensure pending successful completion of the clinical examination. The qualifying clinical examination must be taken within one year of the date of being so advised by the Board. A potential applicant who believes that his or her criminal history may disqualify him or her from licensure may request a Criminal History Evaluation Letter in accordance with §101.9 of this chapter.]

#### *§101.2. Licensure by Examination.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by examination who is a graduate of an accredited school must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists [in its entirety] given by the American Dental Association Joint Commission on National Dental Examinations; and[;]

(3) Has taken and passed [in its entirety] the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board [SBDE].

(b) In addition to the general qualifications for licensure contained in §101.1 of this chapter, an applicant for licensure by examination who is a graduate of a non-accredited school must present proof that the applicant:

(1) Has graduated from a dental school that is not CODA-accredited; [accredited by the Commission on Dental Accreditation of the American Dental Association;]

(2) Has successfully completed training in an American Dental Association-approved specialty in a CODA-accredited [an] education program [that is accredited by the Commission on Dental Accreditation];

ereditation and] that consists of at least two years of training as specified by the Council on Dental Education;

(3) Has taken and passed the examination for dentists [~~in its entirety~~] given by the American Dental Association Joint Commission on National Dental Examinations; and[;]

(4) Has taken and passed [~~in its entirety~~] the appropriate general dentistry clinical examination administered by a regional examining board designated by the Board. Many regional examining [~~testing~~] boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the Board [SBDE].

(c) Licensure by specialty examination. Applicants for licensure by specialty examination must present proof that the applicant:

(1) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board [testing service];

(2) Has taken and passed a specialty examination administered by a regional examining board designated by the Board [SBDE]. Many regional examining boards require prior written approval by the participating member state in order for graduates of non-accredited schools to be tested. Prior to submitting an application for regional examination, graduates of non-accredited schools must obtain such permission from the Board [SBDE]; and[;]

(3) Has either:

(A) successfully completed training in an American Dental Association-approved specialty in a CODA-accredited [an] education program that consists of at least two years of training as specified by the Council on Dental Education [~~is accredited by the Commission on Dental Accreditation of the American Dental Association~~]; or

(B) been currently or previously certified as a "Board Candidate" or "Diplomate" by an American Dental Association-approved specialty board.

(d) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the Board [SBDE] as of the effective dates shown:

(A) Western Regional Examining Board, January 1, 1994;

(B) Central Regional Dental Testing Service, January 1, 2002;

(C) Northeast Regional Board, January 1, 2005;

(D) Southern Regional Testing Agency, January 1, 2005; and[;]

(E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

[(3) Only results from examinations taken after the indicated acceptance date will be accepted.]

(e) Remediation.

(1) If an applicant for Texas dental licensure fails three general dentistry clinical examination attempts, the applicant must complete 80 [~~eighty (80)~~] hours of clinical remediation through a CODA-accredited dental school [accredited by the Commission on Dental Accreditation of the American Dental Association (CODA)] before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more general dentistry clinical examination attempts, the applicant must [~~will be required to~~] complete one of the following before approval will be issued to take another clinical examination:

(A) the repetition of the final year of a graduate dental program from a CODA-accredited dental school [4th year of an undergraduate clinical program]; or[;]

(B) a clinical remediation course offered by a CODA-accredited dental school, consisting of no less than 1,000 clinical hours.

(3) All programs of clinical remediation require prior approval by the Board [SBDE]. Applicants will be responsible for locating, identifying and obtaining approval from the Board [SBDE] prior to registration for any program.

(4) Re-examination must be accomplished within 18 months following the date the Board [SBDE] approves a remediation program for the applicant.

#### *§101.3. Licensure by Credentials.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA); [~~Dental schools so accredited are approved by the Board for purposes of licensing their graduates by credentials;~~]

(2) Is currently licensed as a dentist in good standing in another state, the District of Columbia, or a territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board; [that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;]

(3) Has practiced dentistry:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school [accredited by the Commission on Dental Accreditation of the American Dental Association] for a minimum of five years immediately preceding application to the Board;

(4) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the [~~entity with jurisdiction over the~~] applicant's current license and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has taken and passed the examination for dentists given by the American Dental Association Joint Commission on National Dental Examinations;

[(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed;]

{(6) Has passed a national written examination relating to dentistry as certified by the American Dental Association Joint Commission on National Dental Examinations, or another examination approved by the Board;}

{(7) Has passed a state or regional general dentistry clinical examination;}

(6) [(8)] Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, [For applications filed after August 31, 2002,] an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification; and

{(9) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, §256.101; and}

(7) [(40)] Has completed [Submits proof of completion of] 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) Practice experience described in subsection (a)(3) of this section must be subsequent to applicant having graduated from a CODA-accredited dental school [accredited by the Commission on Dental Accreditation of the American Dental Association].

{(e) Each candidate for licensure by credentials must submit to the Board the required documents and information prescribed in this rule and other documents or information that may be requested to enable the Board to evaluate an application and take appropriate actions.}

#### *§101.4. Temporary Licensure by Credentials.*

(a) In addition to the general qualifications for licensure contained in §101.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary licensure by credentials must present proof that the applicant:

(1) Has graduated and received either the "DDS" or "DMD" degree from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (CODA);

(2) Has taken and passed the examination for dentists [in its entirety] given by the American Dental Association Joint Commission on National Dental Examinations;

(3) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board; [that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act;]

(4) Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the [entity with jurisdiction over the] applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB)

Clearinghouse for Disciplinary Action. For applications filed after August 31, 2002, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification;

{(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed;}

{(6) Has passed a national written examination relating to dentistry as certified by the American Dental Association Joint Commission on National Dental Examinations, or another examination approved by the Board;}

{(7) Has passed a state or regional general dentistry clinical examination;}

{(8) Has successfully passed background checks for criminal or fraudulent activities, to include information from the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action;}

(6) [(9)] Is [Submits documentation that applicant is] currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement; and

{(10) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, §256.101; and}

(7) [(41)] Has completed [Submits proof of completion of] 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education).

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dentist holding a temporary license issued under this section may renew the license by submitting an annual application and paying all required fees.

(d) A dentist holding a temporary license may obtain a license under the provision of §101.3 of this chapter (relating to Licensure by Credentials) when the dentist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §101.3 of this chapter and the application fee charged under this section.

#### *§101.5. Staggered Dental Registrations.*

(a) The Board [State Board of Dental Examiners (Board)], pursuant to the Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental license registration periods followed by annual registrations (i.e., renewals).

(b) The initial, staggered dental license registration periods will range from 6 months to 17 months. [Each dentist for whom an initial dental license registration is issued will be assigned a computer-generated check digit.] The length of the initial license registration period will be according to the licensee's birth month. [assigned check digit as follows:]

[(1)] a dentist assigned to check digit 1 will be registered for 6 months;]

[(2)] a dentist assigned to check digit 2 will be registered for 7 months;]

[(3)] a dentist assigned to check digit 3 will be registered for 8 months;]

[(4)] a dentist assigned to check digit 4 will be registered for 9 months;]

[(5)] a dentist assigned to check digit 5 will be registered for 11 months;]

[(6)] a dentist assigned to check digit 6 will be registered for 12 months;]

[(7)] a dentist assigned to check digit 7 will be registered for 13 months;]

[(8)] a dentist assigned to check digit 8 will be registered for 14 months;]

[(9)] a dentist assigned to check digit 9 will be registered for 15 months; and]

[(10)] a dentist assigned to check digit 10 will be registered for 17 months;]

[(11)] Initial dental license registration fees will be prorated according to the number of months in the initial registration period;]

[(e)] Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of the licensee's initial dental license registration period;]

(c) [(d)] Prior [Approximately 60 days prior] to the expiration date of the initial dental license registration period, a license renewal notice will be mailed to all dental licensees who have that expiration date.

(d) [(e)] A license registration expired for one year or more may not be renewed.

(e) [(f)] An initial license [issued under this chapter on or after September 1, 2009] expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

#### §101.6. *Licensing for Military Spouses.*

(a) This section applies to a dental applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Board [board] may issue a license to a dental applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(c) The Board [board] may allow a dental applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the Board [board]. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a dental license.

(d) In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board [board]:

- (1) education;
- (2) continuing education;
- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the executive director.

(e) The executive director may issue a license by credentials in the same manner as the Board [board] under Texas Occupations Code Chapter 256 to an applicant described under subsection (b) of this section.

(f) The applicant described under subsection (b) of this section shall submit an application and proof of the requirements under this section and for that dental license on a form and in a manner prescribed by the Board [board].

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for that dental license.

(h) The applicant described under subsection (b) of this section shall submit fingerprints for the retrieval of criminal history record information. [undergo a criminal history background check;]

(i) The applicant described under subsection (b) of this section shall not have been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed.

#### §101.7. *Retired License Status.*

(a) Application.

(1) A holder of a valid and current Texas dental license may apply to the Board [board] to have the license placed on retired status.

(2) A licensee must apply to the Board [board] for retired status, on a form prescribed by the Board [board], before the expiration date of the person's Texas license.

(3) The Board [board] shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The Board [board] may reinstate a retired Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board [board], pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dentistry in another state, or territory outside of the United States, or had practiced dentistry actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an

entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support; [CPR certification; and]

(E) proof of completion of 12 [twelve] hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and [pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application.]

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(C) proof of successful completion of a current course in basic life support; [CPR certification; and]

(D) proof of completion of 24 [twenty-four] hours of continuing education, [pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application,] of which a minimum of 12 [twelve] hours must be clinical (hands-on). All hours must have been taken within the 12 months preceding the date the application is received by the Board and shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title; and

(E) proof of submission of fingerprints for the retrieval of criminal history record information.

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and Board [board] rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any Board [board] order that may have been in effect at the time retired status was granted.

(5) The Board [board] may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

(c) Practice in volunteer charity care.

(1) A dentist holding a retired status Texas dental license under this section may practice dentistry if the practice consists solely of volunteer charity care.

(A) For the purposes of this subsection, "volunteer charity care" is defined as the direct provision of dental services to indigent or critical need populations within the state of Texas, without compensation.

(B) A dentist providing services under this subsection may not receive any remuneration for such services.

(C) A dentist may not, without approval from Board [board] staff, provide services under this subsection if he or she was subject to disciplinary action in any jurisdiction in the 3 [three] years immediately preceding the license's entry into retired status.

(2) Application process. A dentist must make written request to the Board [board], on a form prescribed by the Board [board], prior to offering services under this subsection.

(A) The report shall include a sworn affirmation by the dentist that the dentist meets the qualifications of this subsection.

(B) Upon approval by Board [board] staff, a letter of authorization shall be issued to the dentist.

(i) The letter of authorization, unless revoked by the Board [board], shall expire at the end of the calendar year in which it was issued.

(ii) Provision of dental services after the expiration of the letter of authorization shall constitute the practice of dentistry without a license.

(iii) It shall be the responsibility of the dentist to maintain current authorization to provide services under this subsection, by making proper request as required by this subsection.

(3) Scope of practice.

(A) A dentist providing services under this subsection may not prescribe or administer controlled substances under Drug Enforcement Administration (DEA) Schedules I or II.

(B) A dentist providing services under this subsection must post, or be able to produce on demand of a patient, a current letter of authorization from the Board [board].

(4) A dentist practicing under this subsection must complete 6 [six] hours of the annual continuing education requirement for licensees under Chapter 104 of this title.

(5) A dentist providing services under this subsection shall execute a written agreement with the facility where services are offered to retain right of access to all dental records resulting from the provision of such services.

#### *§101.9. Criminal History Evaluation Letter.*

(a) A person enrolled or planning to enroll in an educational program that prepares the person for initial licensure as a dentist and who has reason to believe that he or she may be ineligible for licensure due to a conviction or deferred adjudication for a felony or a misdemeanor offense, may petition the Board for a Criminal History Evaluation Letter.

(b) The requestor must submit a petition that includes:

(1) a statement by the requestor indicating the reason(s) and basis of potential ineligibility;

(2) any applicable court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation;

(3) any other documentation requested by the Board; and

(4) the required fee.

(c) An investigation of the requestor's eligibility may [shall] be conducted.

(d) If the Board determines that a ground for ineligibility does not exist, it shall notify the requestor in writing of the Board's determination on each ground of potential ineligibility.



(e) If the Board determines that the requestor is ineligible for a license, it shall issue a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Board shall provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section no later than the ninetieth (90th) day after the date the Board receives the request.

(g) The Board shall charge a person requesting an evaluation a fee not to exceed \$100 [~~\$100.00~~] to cover the cost of administering this section. The fee shall be non-refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300942

Glenn Parker

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-0987



## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §§103.1 - 103.8

The State Board of Dental Examiners (Board) proposes amendments to §103.1, concerning General Qualifications for Licensure; §103.2, concerning Licensure by Examination; §103.3, concerning Licensure by Credentials; §103.4, concerning Temporary Licensure by Credentials; §103.5, concerning Staggered Dental Hygiene Registrations; §103.6, concerning Licensing for Military Spouses; §103.7, concerning Retired License Status; and §103.8, concerning Criminal History Evaluation Letter. The proposed amendments to Chapter 103 clarify the Board's considerations when reviewing an application for licensure and reconcile inconsistent language throughout Chapters 101 and 103.

Mr. Glenn Parker, Executive Director, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the amendments.

Mr. Parker has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be consistency and clarity in the modification of Board disciplinary action and appearances before the Board. There will be no foreseen effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to General Counsel, Julie Hildebrand, at [julie@tsbde.texas.gov](mailto:julie@tsbde.texas.gov) or by mail to Julie Hildebrand, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. Comments may also be faxed to (512) 463-7452. To be considered, all written com-

ments must be received by the State Board of Dental Examiners no later than 30 days from the date that the amendments are published in the *Texas Register*.

The amendments are proposed under Texas Government Code §§2001.021 et seq. and Texas Occupations Code §254.001, which authorizes the Board to adopt and enforce rules necessary for it to perform its duties.

The proposal affects Texas Occupations Code, Title 3, Subtitle D and Texas Administrative Code, Title 22, Part 5.

#### *§103.1. General Qualifications for Licensure.*

(a) Any person desiring to practice dental hygiene in the State of Texas must possess a license issued by the [Texas] State Board of Dental Examiners (Board) [~~(SBDE)~~] as required by the Dental Practice Act and Board rules [law].

(b) Any applicant for licensure under this chapter must meet the requirements of this section.

(c) To be eligible for licensure, an applicant must present on or accompanying a licensure application form approved by the Board [SBDE] proof satisfactory to the Board [SBDE] that the applicant:

(1) Is at least 18 years of age;

(2) Is of good moral character and professional fitness, which is demonstrated by patterns of personal, academic and occupational behaviors, including final or pending disciplinary action on an occupational license, which, in the judgment of the Board, indicate honesty, accountability, trustworthiness, reliability, integrity, and ability;

(3) [~~(2)~~] Has graduated from an accredited high school or holds a certificate of high school equivalency, General Equivalency Diploma (GED);

(4) [~~(3)~~] Has graduated from a [~~recognized~~] dental school [~~or college of dentistry~~] accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) [~~and approved by the SBDE~~] with a degree in dentistry or a degree or certificate in dental hygiene, or has graduated from a CODA-accredited [~~recognized~~] school or college of dental hygiene [~~accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board~~] with a degree in dental hygiene;

(5) [~~(4)~~] Has taken and passed the examination for dental hygienists [~~in its entirety~~] given by the American Dental Association Joint Commission on National Dental Examinations;

(6) Has met the requirements of §101.8 of this title (relating to Persons with Criminal Backgrounds);

(7) [~~(5)~~] Has successfully completed a current course in basic life support;

(8) [~~(6)~~] Has taken and passed the jurisprudence assessment administered by the Board [SBDE] or an entity designated by the Board [SBDE] within one year prior to application;

(9) [~~(7)~~] Has paid all application, examination and licensure fees required by the Dental Practice Act [law] and Board [SBDE] rules [~~and regulations~~]; and[;]

(10) [~~(8)~~] Has submitted fingerprints for the retrieval of criminal history record information. [Beginning January 1, 2009, has submitted proof of having applicant's fingerprints collected for the required national fingerprint criminal records check.]

(d) Applications for licensure must be delivered to the office of the [State] Board [~~of Dental Examiners~~].

(e) An application for licensure is filed with the Board [SBDE] when it is actually received, date-stamped, and logged-in by the Board [SBDE] along with all required documentation and fees. An incomplete application for licensure and fee will be returned to applicant [within three working days] with an explanation of additional documentation or information needed.

(f) Each applicant must submit to the Board the documents and information required by this chapter and other documents or information requested by the Board to evaluate an application and take appropriate actions. [In the event a potential applicant is uncertain whether he/she is qualified according to rule and law for licensure as a dental hygienist, prior to taking the clinical examination a written request may be submitted by the potential applicant with all proof required other than clinical examination scores. The SBDE will review the information and advise the applicant whether he or she is qualified for licensure pending successful completion of the clinical examination. The qualifying clinical examination must be taken within one year of the date of being so advised by the SBDE. A potential applicant who believes that his or her criminal history may disqualify him or her from licensure may request a Criminal History Evaluation Letter in accordance with §103.8 of this chapter.]

#### §103.2. Licensure by Examination.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by examination must present proof that the applicant has taken and passed [in its entirety] the appropriate clinical examination administered by a regional examining board designated by the Board [SBDE].

(b) Designated regional examining boards.

(1) The following regional examining boards have been designated as acceptable by the [State] Board [of Dental Examiners] as of the effective dates shown:

- (A) Western Regional Examining Board, January 1, 1994;
- (B) Central Regional Dental Testing Service, January 1, 2002;
- (C) Northeast Regional Board, January 1, 2005;
- (D) Southern Regional Testing Agency, January 1, 2005; and[;]
- (E) Council of Interstate Testing Agencies (CITA), January 1, 2009.

(2) Examination results will be accepted for five years from the date of the examination.

[(3) Only results from examinations taken after the indicated acceptance date will be accepted.]

(c) Remediation.

(1) If an applicant for Texas dental hygienist licensure fails three dental hygiene clinical examination attempts, the applicant must complete 40 [forty (40)] hours of clinical remediation through a CODA-accredited dental hygiene program [accredited by the Commission on Dental Accreditation of the American Dental Association (CODA)] before approval will be issued to take another clinical examination.

(2) If an applicant fails four or more dental hygiene clinical examination attempts, the applicant must complete 80 [eighty (80)] hours of clinical remediation through a CODA-accredited dental hy-

giene program before approval will be issued to take another clinical examination.

(3) All programs of clinical remediation require prior approval by the Board [SBDE]. Applicants will be responsible for locating, identifying and obtaining approval from the Board [SBDE] prior to registration for any program.

(4) Re-examination [Reexamination] must be accomplished within 18 months following the date the Board [SBDE] approves a remediation program for the applicant.

#### §103.3. Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for dental hygienist licensure by credentials must present proof that the applicant:

[(1) Has graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association. Dental Hygiene schools so accredited are approved by the Board for purposes of licensing their graduates by credentials;]

(1) [(2)] Is currently licensed as a dentist or dental hygienist in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board; [that has licensing requirements that are substantially equivalent to requirements of the Texas Dental Practice Act;]

(2) [(3)] Has practiced dentistry or dental hygiene:

(A) For a minimum of three years out of the five years immediately preceding application to the Board; or

(B) As a dental educator at a CODA-accredited dental or dental hygiene school [accredited by the Commission on Dental Accreditation of the American Dental Association] for a minimum of five years immediately preceding application to the Board;

(3) [(4)] Is endorsed by the state board of dentistry that has jurisdiction over the applicant's current practice. Such endorsement is established by providing a copy under seal of the [entity with jurisdiction over the] applicant's current license[;] and by a certified statement that the applicant has current good standing in said jurisdiction;

[(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed;]

[(6) Has passed a national written examination relating to dental hygiene as certified by the American Dental Association Joint Commission on National Dental Examinations or another examination approved by the Board;]

[(7) Has passed a state or regional dental hygiene clinical examination;]

[(8) Is reputable, as demonstrated by at least two notarized letters of character reference;]

[(9) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, §256.101; and]

(4) [(10)] Has completed [Submits proof of completion of] 12 hours of continuing education taken within the 12 [twelve] months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.

[(b) Every applicant shall make application with the Professional Background Information Services (PBIS), paying the required fees, and requesting that a Level II verification be sent to the Board.]

(b) [(e)] Practice experience described in subsection (a)(2)[(3)] of this section must be subsequent to applicant having graduated from a CODA-accredited dental or dental hygiene school [accredited by the Commission on Dental Accreditation of the American Dental Association].

[(d) Each candidate for licensure by credentials must submit to the Board the required documents and information prescribed in this rule and other documents or information that may be requested to enable the Board to evaluate an application and take appropriate actions.]

#### §103.4. Temporary Licensure by Credentials.

(a) In addition to the general qualifications for licensure contained in §103.1 of this chapter (relating to General Qualifications for Licensure), an applicant for temporary dental hygienist licensure by credentials must present proof that the applicant:

[(1) Has graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;]

(1) [(2)] Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States, provided that such licensure followed successful completion of a dental hygiene clinical examination administered by another state or regional examining board; [that has licensing requirements that are substantially equivalent to requirements of the Texas Dental Practice Act;]

(2) [(3)] Is endorsed by the state board of dentistry that has jurisdiction over the current practice. Such endorsement is established by providing a copy under seal of the [entity with jurisdiction over the] applicant's current license, and by a certified statement that the applicant has current good standing in said jurisdiction;

[(4) Has not been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed;]

[(5) Has passed a national written examination relating to dental hygiene as certified by the American Dental Association Joint Commission on National Dental Examinations or another examination approved by the Board;]

[(6) Has passed a state or regional dental hygiene clinical examination;]

[(7) Is reputable, as demonstrated by at least two letters of character reference on which signatures have been notarized;]

(3) [(8)] Is [Submits documentation that applicant is] currently employed by a nonprofit corporation that is organized under the Texas Non Profit Corporation Act, and that accepts Medicaid reimbursement;

[(9) Shows proof of current CPR certification as required by the Texas Dental Practice Act, Chapter 256, §256.101; and;]

(4) [(10)] Has completed [Submits proof of completion of] 12 hours of continuing education taken within the 12 months preceding the date the licensure application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and

(5) Has successfully passed background checks for criminal or fraudulent activities, to include information from: the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Boards (AADB) Clearinghouse for Disciplinary Action. Additionally, an applicant shall make application with the Professional Background Information Services (PBIS), requesting Level II verification, paying the required fees, and requesting verification be sent to the Board for determination of successful background verification.

(b) A license granted under this section is valid only for practice as an employee of the non-profit corporation named on the application.

(c) A dental hygienist holding a temporary license issued under this section may renew the license by submitting an annual renewal application and paying all required fees.

(d) A dental hygienist holding a temporary license may obtain a license under the provisions of §103.3 of this chapter (relating to Licensure by Credentials) when the dental hygienist meets the practice requirements set forth in that section, by requesting in writing that the Board issue such license and by paying a fee equal to the difference between the application fee charged under §103.3 of this chapter and the application fee charged under this section.

#### §103.5. Staggered Dental Hygiene Registrations.

(a) The [State] Board [of Dental Examiners], pursuant to Occupations Code, Chapter 257, §257.001, Texas Civil Statutes has established a staggered license registration system comprised of initial dental hygiene license registration periods followed by annual registrations (i.e., renewals).

(b) The initial dental hygiene license registration periods will range from 6 months to 17 months. [Each dental hygienist for whom an initial dental hygiene license registration is issued will be assigned a computer generated check digit.] The length of the initial license registration period will be according to the licensee's birth month. [determined on the basis of the assigned check digit as follows:]

[(1) A dental hygienist assigned to check digit 1 will be registered for 6 months;]

[(2) A dental hygienist assigned to check digit 2 will be registered for 7 months;]

[(3) A dental hygienist assigned to check digit 3 will be registered for 8 months;]

[(4) A dental hygienist assigned to check digit 4 will be registered for 9 months;]

[(5) A dental hygienist assigned to check digit 5 will be registered for 11 months;]

[(6) A dental hygienist assigned to check digit 6 will be registered for 12 months;]

[(7) A dental hygienist assigned to check digit 7 will be registered for 13 months;]

[(8) A dental hygienist assigned to check digit 8 will be registered for 14 months;]

[(9) A dental hygienist assigned to check digit 9 will be registered for 15 months; and]

[(10) A dental hygienist assigned to check digit 10 will be registered for 17 months.]

[(e) Initial dental hygiene license registration fees will be prorated according to the number of months in the initial registration period.]

[(d) Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of licensee's initial dental hygiene license registration period.]

(c) [(e)] Prior [Approximately 60 days prior] to the expiration date of the initial dental hygiene license registration period, a license renewal notice will be mailed to all dental hygiene licensees who have that expiration date.

(d) [(f)] A license registration expired for one year or more may not be renewed.

(e) [(g)] An initial license [issued under this chapter on or after September 1, 2009] expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before the expiration date.

#### *§103.6. Licensing for Military Spouses.*

The Board may issue a license to a dental hygienist applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States in compliance with §101.6 of this title (relating to Licensing for Military Spouses).

[(a) This section applies to a dental hygiene applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.]

[(b) The board may issue a license to a dental hygiene applicant described under subsection (a) of this section who:]

[(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or]

[(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.]

[(c) The board may allow a dental hygiene applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental hygiene license issued by the board. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a dental hygiene license.]

[(d) In lieu of the standard method(s) of demonstrating competency for a dental hygiene license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the board:]

[(1) education;]

[(2) continuing education;]

[(3) examinations (written and/or practical);]

[(4) letters of good standing;]

[(5) letters of recommendation;]

[(6) work experience; or]

[(7) other methods required by the executive director.]

[(e) The executive director may issue a license by credentials in the same manner as the board under Texas Occupations Code Chapter 256 to an applicant described under subsection (b) of this section.]

[(f) The applicant described under subsection (b) of this section shall submit an application and proof of the requirements under this section and for that dental hygiene license on a form and in a manner prescribed by the board.]

[(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for that dental hygiene license.]

[(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.]

[(i) The applicant described under subsection (b) of this section shall not have been the subject of final or pending disciplinary action in any jurisdiction in which the applicant is or has been licensed.]

#### *§103.7. Retired License Status.*

##### (a) Application.

(1) A holder of a valid and current Texas dental hygiene license may apply to the Board [board] to have the license placed on retired status.

(2) A licensee must apply to the Board [board] for retired status, on a form prescribed by the Board [board], before the expiration date of the person's Texas license.

(3) The Board [board] shall deny a request to place a license on retired status if there are any current or pending complaints or disciplinary actions against the license holder.

(b) Reinstatement. The Board [board] may reinstate a retired Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the Board [board], pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) A license holder who, at the time of application for reinstatement, is practicing dental hygiene in another state, or territory outside of the United States, or had practiced dental hygiene actively within the two years immediately preceding the date of application, shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof of active practice within the two years preceding the application;

(C) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(D) proof of successful completion of a current course in basic life support; [CPR certification; and]

(E) proof of completion of 12 [twelve] hours of continuing education, taken within the 12 months preceding the date the application is received by the Board. All hours shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title (relating to Continuing Education); and [pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application.]

(F) proof of submission of fingerprints for the retrieval of criminal history record information.

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) verification of licensure and disciplinary history from all state board(s) of dentistry where the licensee has held a license;

(B) proof that the licensee has taken and passed the Texas jurisprudence assessment administered by the Board or an entity designated by the Board within one year immediately prior to application;

(C) proof of successful completion of a current course in basic life support; [CPR certification; and]

(D) proof of completion of 24 ~~[twenty-four]~~ hours of continuing education, ~~[pursuant to Chapter 104 of this title; completed within the twelve months immediately preceding the date of application;]~~ of which a minimum of 12 ~~[twelve]~~ hours must be clinical (hands-on). All hours must have been taken within the 12 months preceding the date the application is received by the Board and shall be taken in accordance with the requirements for continuing education as mandated by Chapter 104 of this title; and

(E) proof of submission of fingerprints for the retrieval of criminal history record information.

(3) A license holder who applies to reenter active practice must comply with all other applicable provisions of the Dental Practice Act and Board ~~[board]~~ rules.

(4) A license holder who applies to reenter active practice must have been in compliance or satisfied all conditions of any Board ~~[board]~~ order that may have been in effect at the time retired status was granted.

(5) The Board ~~[board]~~ may, in its discretion as necessary to safeguard public health and safety, require compliance with other reasonable conditions in considering a request to reenter active practice.

*§103.8. Criminal History Evaluation Letter.*

(a) A person enrolled or planning to enroll in an educational program that prepares the person for initial licensure as a dental hygienist and who has reason to believe that he or she may be ineligible for licensure due to a conviction or deferred adjudication for a felony or a misdemeanor offense, may petition the Board for a Criminal History Evaluation Letter.

(b) The requestor must submit a petition that includes:

(1) a statement by the requestor indicating the reason(s) and basis of potential ineligibility;

(2) any applicable court documents including, but not limited to, indictments, orders of deferred adjudication, judgments, probation records and evidence of completion of probation;

(3) any other documentation requested by the Board; and

(4) the required fee.

(c) An investigation of the requestor's eligibility may ~~[shall]~~ be conducted.

(d) If the Board determines that a ground for ineligibility does not exist, it shall notify the requestor in writing of the Board's determination on each ground of potential ineligibility.

(e) If the Board determines that the requestor is ineligible for a license, it shall issue a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Board shall provide notice under subsection (d) of this section or issue a letter under subsection (e) of this section no later than the ninetieth (90th) day after the date the Board receives the request.

(g) The Board shall charge a person requesting an evaluation a fee not to exceed \$100 ~~[\$100.00]~~ to cover the cost of administering this section. The fee shall be non-refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300941

Glenn Parker

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-0987



## TITLE 25. HEALTH SERVICES

### PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

#### CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

##### 25 TAC §§702.9, 702.11, 702.13, 702.19

The Cancer Prevention and Research Institute of Texas (Institute or CPRIT) proposes amendments to §§702.9, 702.11, 702.13, and 702.19, concerning institute standards on ethics and conflicts, including relationships between the institute and private organizations and donors. The proposed amendments are to be codified as §§702.9, 702.11, 702.13, and 702.19, titled "Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute."

The purpose of these proposed amendments is to clarify several existing rules, to reflect changes to the statute, to be consistent with other chapters, and to provide additional guidance regarding applicable conflict of interest standards, procedures for recusal and restrictions on communication that provide certain applicants unfair advantages. The Texas Health and Safety Code, §102.106 directs the CPRIT Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee. In addition, these amendments are proposed pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255; Texas Health and Safety Code, Chapter 102; and other relevant statutes.

Section 702.9 is amended to expand the applicability of the section to members of the institute's scientific research and prevention program committees. The section also proposes to require filing of financial disclosure forms with the institute, prohibits individuals subject to the section from engaging in business or professional activities with a grant recipient and defines the term "business or professional activity"; and requires the institute's oversight committee to adopt a code of conduct and ethics.

Section 702.11 is amended to remove university advisory committee members and ad hoc committee members from requirements of this section because these committees are not part of the institute's grant review process. The section is also amended to include certain relationships with foundations affiliated with grant applicant as part of the required professional conflict check.

Section 702.13 is amended to provide a description of certain conflicts of interest that require recusal of the individual from entire review cycle. The section also requires the institute to retain supporting documentation regarding implementation of its conflict of interest policy. References to the university advisory committee and ad hoc committee members are deleted because these committees are not part of the institute's grant review process.

Section 702.19 is amended to clarify the limitation on communication between the applicant and individuals involved in the institute's review process and specify the documentation required for policy waivers. The section adds a requirement limiting communication between the executive director and oversight committee members about grant recommendations until recommendations are publicly announced.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or on micro businesses.

Written comments on the rules may be submitted to Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than 30 days after the date of publication in the *Texas Register*. Comments may be submitted electronically to [kdoyle@cpr.itx.us](mailto:kdoyle@cpr.itx.us) with the subject line "public comments on rule changes." Comments may be submitted by facsimile transmission to (512) 475-2563.

The amendments are proposed under the authority of the Texas Health and Safety Code Annotated, §§102.106, 102.108, and 102.251, which provide the institute with the authority to adopt rules relating to conflict of interest and grant award procedures.

There is no other statute, article or code that is affected by this proposal.

*§702.9. General Standards of Conduct for Oversight Committee Members, [and] Institute Employees, and Scientific Research and Prevention Program Committee Members.*

Pursuant to the provisions of Texas Government Code Chapter 572 and Texas Health and Safety Code Chapter 102:

(1) A member of the Oversight Committee, [or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not accept or solicit any gift, favor, or service [that might reasonably tend to influence him or her] in the discharge of official duties [or that he or she knows or should know is being offered with the intent to influence him or her with the intent to influence his or her official conduct].

(2) A member of the Oversight Committee, [or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not accept employment or engage in any business or professional activity that [; which he or she might reasonably expect] would require or induce that person to disclose confidential information acquired by reason of his or her official position.

(3) A member of the Oversight Committee, [or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not accept other employment or compensation that impairs [; which could reasonably be expected to impair] his or her independence of judgment in the performance of his or her official duties.

(4) A member of the Oversight Committee, [or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not make personal investments or have a financial interest that creates [; which could may reasonably be expected to create] a substantial conflict between his or her private interest and the individual's official duties [as a member of the Oversight Committee, or employee of the Institute].

(5) A member of the Oversight Committee, [or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another.

(6) A member of the [An] Oversight Committee, [member or] employee of the Institute, or Scientific Research and Prevention Program committee member shall not lease, directly or indirectly, any property, capital equipment, employee or service to any program, business, enterprise or institution that receives a grant from the Institute.

(7) A member of the Oversight Committee or the member's spouse shall not submit a grant application for funding by the Institute.

(8) A member of the Oversight Committee or the member's spouse shall not be employed by or participate in the management of a business entity or other organization receiving money from the Institute.

(9) A member of the Oversight Committee or the member's spouse shall not own or control, directly or indirectly, more than five percent interest in a business or entity or other organization receiving money from the Institute.

(10) A member of the Oversight Committee or the member's spouse shall not use or receive a substantial amount of tangible goods, services, or money from the Institute other than reimbursement authorized for Oversight Committee members, attendance, or expenses.

(11) Any reports due under Texas Government Code §572.021 shall be simultaneously filed with the Institute.

(12) A member of the Oversight Committee, employee of the Institute, or Scientific Research and Prevention Program committee member shall not accept employment or engage in any business activity with a grant applicant or grant recipient or with a foundation or

similar organization affiliated with the entity. For purpose of this rule, a "business activity" includes serving on the grant applicant or grant recipient's board of directors or other committee that have governing powers over the entity, even if such service is without compensation.

(13) The Oversight Committee shall adopt a Code of Conduct and Ethics that applies to Oversight Committee members, employees of the Institute, Scientific Research and Prevention Program committee members, and contracted service providers.

*§702.11. Conflicts of Interest Requiring Recusal.*

(a) For purposes of this chapter, a conflict of interest exists when an individual subject to this rule has an interest in the outcome of an application such that the individual is in a position to gain financially, professionally, or personally from either a positive or negative evaluation of the grant proposal. Individuals subject to this rule are:

- (1) Oversight Committee members;
- ~~[(2) University Advisory Committee members;]~~
- ~~[(3) Ad hoc committee(s) members;]~~

(2) ~~[(4)]~~ Institute employees; and

(3) ~~[(5)]~~ Scientific Research and Prevention Program committee members.

(b) Except under exceptional circumstances as provided in §702.17 of this chapter (relating to Exceptional Circumstances Requiring Participation), an individual who has a conflict of interest with respect to an application may not participate in the review, discussion, deliberation, or vote on the application.

(c) A financial conflict of interest exists if the individual subject to this rule or a close relative of the individual:

(1) Owns or controls, directly or indirectly, an ownership interest of five percent (5%) or more in a business entity or other organization receiving or applying to receive funds ~~[money]~~ from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

(2) Could reasonably foresee that an action taken by the Scientific Research and Prevention Program committee, the Institute or its Oversight Committee could result in a financial benefit to the individual ~~[of 100% or more]~~.

(d) For purposes of this rule, a professional conflict of interest exists if the individual subject to this rule or a close relative:

(1) Is a member of the board of directors, other governing board or any committee of an entity or a foundation or similar organization affiliated with the entity ~~[other organization]~~ receiving or applying to receive funds ~~[money]~~ from the Institute during the same grant cycle;

(2) Serves as an elected or appointed officer of an entity or a foundation or similar organization affiliated with the entity ~~[other organization]~~ receiving or applying to receive funds ~~[money]~~ from the Institute;

(3) Is an employee of or is negotiating future employment with an entity or a foundation or similar organization affiliated with the entity ~~[other organization]~~ receiving or applying to receive funds ~~[money]~~ from the Institute;

(4) Represents an entity or a foundation or similar organization affiliated with the entity ~~[other organization]~~ receiving or applying to receive funds ~~[money]~~ from the Institute in business or law;

(5) Is a professional associate of a primary member of the research/prevention program applicant's team;

(6) Is a student, postdoctoral associate, or part of a laboratory research group for a primary member of the research/prevention program applicant's team or has been within the past six years;

(7) Is engaged or is actively planning to be engaged in collaboration with a primary member of the research/prevention program applicant's team; or

(8) Has long-standing scientific differences or disagreements with a primary member of the research/prevention program applicant's team that are known to the professional community and could be perceived as affecting objectivity.

(e) For purposes of this rule, a personal conflict of interest exists if the applicant is a family member or close personal friend of an individual subject to this rule.

(f) Nothing in this rule ~~[herein]~~ shall prevent Oversight Committee members, Institute employees, or Scientific Research and Prevention Program committee members from adopting more stringent standards with regard to prohibited conflicts of interest.

(g) The Executive Director may provide guidance to the members of the Oversight Committee, Institute employees, and Scientific Research and Prevention Program committee members on what interests would constitute a conflict of interest or an appearance of a conflict of interest.

*§702.13. Disclosure of Conflict of Interest and Recusal from Review.*

(a) If an Oversight Committee member has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the member shall:

(1) Notify the Executive Director and the presiding officer of the Oversight Committee of the conflict of interest (or the next ranking member of the Oversight Committee if presiding officer has the conflict of interest);

(2) Disclose the conflict of interest in an open meeting of the Oversight Committee; and

(3) Recuse himself/herself from participation in the review, discussion, deliberation and vote on the application, including access to information regarding the matter to be decided. If the conflict of interest is a type specified in subsection (c) of the section, then the member shall recuse himself/herself from participating in the review, discussion, deliberation and vote on any application considered for a grant award for the particular grant award cycle.

(b) If a Scientific Research and Prevention Program committee member has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the member shall:

(1) Notify the Scientific Research and Prevention Program committee chair and the ~~[CPRIF]~~ Chief Scientific Officer, Chief Prevention Officer, or the Chief Product Development ~~[Commercialization]~~ Officer as may be applicable, of the conflict of interest; and

(2) Recuse himself/herself from any participation in the review, discussion, scoring, deliberation and vote on the application, including access to information regarding the matter to be decided. If the conflict of interest is a type specified in subsection (c) of the section, then the member shall recuse himself/herself from participating in the review, discussion, deliberation and vote on any application considered for a grant award for the particular grant award cycle.[: and]

{(3) Submit a signed certification post-review statement at the conclusion of the peer review process that he/she did not participate in the discussion or review of any application for which he/she had a conflict of interest.}

(c) Some conflicts of interest are such that the existence of the conflict with one application raises the presumption that the conflict may affect other applications in the review cycle. The Institute has determined that the existence of one or more of the following conflicts of interest for an Oversight Committee member, Scientific Research and Prevention Program committee member, or Institute employee shall require recusal of the member or employee from participating in the review, discussion, scoring, deliberation and vote on all applications in the entire review cycle:

(1) The member or employee is an employee of an organization that has submitted a grant application in the review cycle;

(2) The member or employee is actively seeking employment at an organization that has submitted a grant application in the review cycle. For the purposes of this paragraph, "actively seeking employment" includes activities such as submission of an employment application, resume, curriculum vitae, or similar document and/or interviewing with one or more representatives from the organization with no final action taken by the organization regarding consideration of such employment;

(3) The member or employee serves on the board of directors of an organization or a foundation or similar organization affiliated with the entity that has submitted a grant application in the review cycle;

(4) The member or employee serves as an elected or appointed officer of an organization or a foundation or similar organization affiliated with the entity that has submitted a grant application in the review cycle; and

(5) The member or employee owns or controls, directly or indirectly, an ownership interest of five percent (5%) or more in a business entity or a foundation or similar organization affiliated with the entity that has submitted a grant application in the review cycle. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

{(e) If a University Advisory Committee member or a member of an ad hoc committee has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review, or other action, the member shall:}

{(1) Notify the Executive Director of the conflict of interest; and}

{(2) Recuse himself/herself from participation in the review, discussion, scoring, deliberation, and vote on the application, including access to information regarding the matter to be decided.}

(d) If an Institute employee other than the Executive Director has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review or other action, the employee shall:

(1) Notify the Executive Director of the conflict of interest; and

(2) Recuse himself/herself from participation in the review of the application and be prevented from accessing information regarding the matter to be decided. If the conflict of interest is a type specified in subsection (c) of the section, then the employee shall recuse

himself/herself from participating in the review, discussion, deliberation and vote on any application considered for a grant award for the particular grant award cycle.

(e) If the Executive Director has a conflict of interest as described in this chapter with respect to an application that comes before the Executive Director for review or other action, the Executive Director [employee] shall:

(1) Notify the presiding officer of the Oversight Committee of the conflict of interest; [and]

(2) Disclose the conflict of interest in an open meeting of the Oversight Committee; and

(3) Recuse himself/herself from participation in the review of the application and be prevented from accessing information regarding the matter to be decided. If the conflict of interest is a type specified in subsection (c) of the section, then the Executive Director shall recuse himself/herself from participating in the review, discussion, deliberation and vote on any application considered for a grant award for the particular grant award cycle.

(f) Individuals subject this chapter are encouraged to self-report. Any individual who self-reports a potential conflict of interest or any impropriety or self-dealing, and who fully complies with any recommendations of the General Counsel and recusal from any discussion, voting, deliberation or access to information regarding the matter, shall be considered by the Institute to be in compliance with this chapter. The individual is still subject to the operation of other laws, rules, requirements or prohibitions. Substantial compliance with the procedures provided herein constitutes compliance.

(g) Intentional violations of this rule may result in the removal of the individual from further participation in the Institute's grant review process.

(h) The Institute shall retain supporting documentation regarding the implementation of the conflict of interest policy and actions taken to exclude the conflicted Oversight Committee member, Scientific Research and Prevention Program committee member or employee from participating in the review, discussion, deliberation and vote on the application. For purposes of this subsection, "supporting documentation" may include signed conflict of interest form, information identifying the disclosure of the conflict of interest for the Oversight Committee member, Scientific Research and Prevention Program committee member, or Institute employee. For purposes of this rule, "supporting documentation" may include conflict of interest agreements, conflict of interest disclosure forms, sign-out sheets, post-review certifications and Oversight Committee meeting minutes.

*§702.19. Restriction on Communication Regarding Pending Application.*

(a) Communication regarding the substance of a pending application between the applicant and an Oversight Committee member, the Executive Director, or a Scientific Research and Prevention Program committee member is prohibited; except for communication with an applicant for the purpose of resolving a question raised by the grant application].

(b) The prohibition on communication begins on the first day that applications for the particular funding award are accepted by the Institute and extends until the applicant receives notice regarding a final decision on the application. The prohibition on communication does not apply to the time period when pre-applications or letters of interest are accepted.

(c) Intentional, serious, or frequent violations of this rule may result in the disqualification of the applicant from further consideration



for Institute [a CPRIT] funding [award. An inadvertent violation of this rule will not affect the applicant's eligibility to receive a CPRIT funding award].

(d) This rule is not intended to prohibit open dialogue between the public and the Executive Director or a member of the Oversight Committee regarding the general status or nature of pending applications.

(e) The Executive Director may grant a waiver from the general prohibition on communication upon finding that the waiver is in the interest of promoting the objectives of the Institute and is not intended to give one or more applicants an unfair advantage. The waiver shall be in writing and state the reasons for the granting the waiver. The waiver shall be publicly available.

(f) The Executive Director shall not communicate individually with members of the Oversight Committee about grant recommendations received from the Review Council until such time that the grant recommendations are publicly announced at an open meeting of the Oversight Committee. Nothing in this rule shall prohibit the Executive Director from responding to a question raised by an individual Oversight Committee member so long as the response is provided in writing to all Oversight Committee members.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300952

Wayne Roberts

Executive Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 305-8422



## CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

**25 TAC §§703.2, 703.3, 703.5 - 703.8, 703.10, 703.11, 703.13, 703.21, 703.25, 703.26**

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§703.2, 703.3, 703.5 - 703.8, 703.10, 703.11, and 703.13; and new §§703.21, 703.25, and 703.26, concerning grant awards for cancer prevention and research.

The purpose of the proposed amendments and new sections is to clarify several existing rules, to reflect changes to the statute, to be consistent with other chapters, and to provide additional guidance regarding the grant review and award process. The amendments and new sections are proposed pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255; Texas Health and Safety Code, Chapter 102; and other relevant statutes.

Section 703.2 adds the definitions for "chief product development officer", "compliance officer", "product development review council", and "product development prospects." The section proposes to delete references to the "chief commercialization officer", the "commercialization review council", and "commercial prospects". The section also clarifies the definition of "cancer research" to include research into the prevention of cancer.

Section 703.3 proposes changes to address requirements for the applicant seeking a grant award. The section clarifies the areas of cancer research and prevention program that the Institute's requests for applications will address. The section also clarifies "material requirements" that must be satisfied by the applicant to be eligible for review. It adds the high-level summary of the application to the list of information considered public information. New requirements are added regarding prohibited donations to the CPRIT Foundation or similar foundation and the identification of all sources of funding contributing to the project proposed for Institute funding.

Section 703.5 is proposed to clarify that scientific research and prevention program appointments are provisional until the Oversight Committee approves the appointments. The section is also amended to clarify the Institute's policy on residency requirements for scientific research and prevention program committee members. A limitation was added prohibiting the scientific research or prevention program committee member or immediate family member from providing professional services for more than \$5,000 to any grant recipient for a period of one year from the effective date of the grant award unless waived by the Oversight Committee. The section was also amended to require the Institute to provide a list of all current reviewers by panel and notify the applicant of the panel assignment.

Section 703.6 is proposed to clarify the goals of review process and to add the Texas Cancer Plan to list of funding priorities for proposals. The section was also amended to include various requirements regarding documentation of review committee recommendations and to specify the timing and delivery of the review council recommendations. Other proposed changes are to incorporate an independent third party observer of the scientific research and prevention programs committee meetings who will issue a report and to clarify that all reviewers are required to sign the post review statements certifying compliance with the Institute's conflict of interest rules and policies.

Section 703.7 is amended to require the Executive Director to notify the Compliance Officer of award recommendations so that the Compliance Officer may review the process documentation for each recommendation and report the findings. Other changes also specify the items that must accompany the Executive Director's recommendations for funding submitted to the Oversight Committee and clarify the items that will be publicly available after the award announcement.

Section 703.8 is amended to change the section title and to require that any advance of grant funds must be approved by a majority vote of the Oversight Committee. Additional requirements proposed for this section include the Compliance Officer's public certification of the award slate and the execution of post-review statements by certain individuals involved with the review process certifying that the Institute's conflict of interest rules were followed.

Section 703.10 is amended to reflect definitional changes. In addition, the section sets forth terms to be included in the grant contract for advancing grant funds, for providing quarterly financial statements and penalties for failing to file timely reports, for certifying that the grant recipient has not made and will not make contributions to the CPRIT Foundation or similar foundation, and the Institute's right to terminate for the recipient's failure to comply with contract provisions. Proposed changes to the section also clarify that the effective date stated in the award contract controls over the signature date of the contract and provide for a process that reimburses allowable expenses expended after

the award is publicly announced but prior to the effective date of the contract. The section also sets forth close-out requirements which include a list of contractual terms that extend beyond the contract termination date.

Section 703.11 clarifies the process, documentation and review required for demonstrating available funds for cancer research grants and specifies that failure to provide certification of available funds will serve as grounds for contract termination.

Section 703.13 clarifies that any grant recipient expending \$500,000 or more in federal or state awards during its fiscal year will obtain either an annual single audit or a program specific audit, as appropriate, and sets forth the penalty for failing to timely submit required audit reports.

Section 703.21 is proposed to set forth how the Institute will monitor performance of grant projects, including a mandatory progress report. The rule describes the process for Institute review of the required progress reports, the public presentation of results of progress evaluations, and actions taken if it is found that sufficient progress is not being made.

Section 703.25 is proposed to set forth the Institute's compliance and ethics program, including the Compliance Officer's public report on compliance activities of the Institute.

Section 703.26 is proposed to create the procedures for investigating complaints regarding compliance violations, including the establishment of an ethics hotline, the prompt investigation by the Compliance Officer, and review by the Audit Subcommittee of the Oversight Committee. The new rule also describes documentation and reporting policies and requires ethics training for Institute staff.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the policies and procedures the Institute will follow to implement its statutory duties to award grants from the Cancer Prevention and Research fund. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or micro businesses.

Written comments on the proposed amendments and new sections may be submitted to Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, by facsimile transmission at (512) 475-2563; by electronic mail to [kdoyle@cpr.it.state.tx.us](mailto:kdoyle@cpr.it.state.tx.us); or by U.S. mail to P.O. Box 12097, Austin, Texas 78711. Comments are due within 30 days of the publication of proposed rules in the *Texas Register*.

The amendments and new sections are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute's Oversight Committee with rulemaking authority and direct the Institute to adopt rules relating to grant award procedures.

There is no other statute, article, or code that is affected by this proposal.

§703.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits an application to the Institute for a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute. Unless otherwise indicated, this term includes the principal investigator.

(2) Authorized expenses--items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses, except as otherwise provided by this chapter.

(3) Cancer prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(4) Cancer prevention and control program--cancer prevention programs designed to mitigate the incidence of all types of cancer in humans.

(5) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of patent, royalty, and license fees and other income received under a contract with a grant recipient, legislative appropriations, gifts, grants, and other donations, and earned interest.

(6) Cancer research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including pre-clinical studies, animal studies, translational research, and clinical research to develop therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer in humans.

(7) Chief Prevention Officer--the individual employed by the Institute to oversee the program review and evaluation of the grant applications for cancer prevention activities.

(8) Chief Product Development Officer--the individual employed by the Institute to oversee the review and evaluation of grant applications for the development of drugs, biological, diagnostics, or devices arising from cancer research and prevention activities.

~~[(7) Chief Commercialization Officer--the individual employed by the Institute to oversee the review and evaluation of commercial prospects of the grant applications for cancer research and prevention activities.]~~

~~[(8) Chief Prevention Officer--the individual employed by the Institute to oversee the scientific and program review and evaluation of the grant applications for cancer prevention activities.]~~

(9) Chief Scientific Officer--the individual employed by the Institute to oversee the scientific review and evaluation of the grant applications for cancer research activities.

(10) Compliance Officer--the individual employed by the Institute to oversee the compliance activities of the Institute.

~~[(10) Commercialization Review Council--the group of individuals designated to review the commercial prospects of cancer research and prevention program applications.]~~

~~[(11) Commercial prospects--the potential for development of commercial products or services or the development of~~

infrastructure to support these efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.}

(11) [(42)] Encumbered funds--funds that are designated by a recipient for a specific purpose.

(12) [(43)] Grant--a funding mechanism, including a direct company investment, awarded by the Institute providing funds [money] to the recipient to carry out the research or prevention program objectives.

(13) [(44)] Indirect costs--the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

(14) [(45)] Institute--the Cancer Prevention and Research Institute of Texas.

(15) [(46)] Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the grant awarded by the Institute:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(16) [(47)] Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the grant recipient in the performance of work funded by the grant.

(17) [(48)] License agreement--an understanding by which an owner of technology and associated intellectual property rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the technology or intellectual property rights in exchange for consideration.

(18) [(49)] Prevention Review Council--the group of individuals designated as chairs of the scientific research and prevention program committees created to review cancer prevention program applications.

(19) Product Development Review Council--the group of individuals designated as chairs of the scientific research and prevention program committees created to review the grant applications for cancer product development.

(20) Product development prospects--the potential for development of products, services, or infrastructure to support cancer research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(21) [(20)] Project Results--any and all technology and associated intellectual property Rights.

(22) [(21)] Recipient--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, or any combination of the aforementioned that is awarded a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute.

(23) [(22)] Scientific research and prevention program committee--one or more groups of experts in the field of cancer research, prevention or product development [commercialization] appointed by the Executive Director and approved by the Oversight Committee for the purpose of reviewing grant applications and making recommendations to the Executive Director regarding the award of cancer research and prevention grants.

(24) [(23)] Scientific Review Council--the group of individuals designated as chairs of the scientific research and prevention program committees created to review cancer research applications.

(25) [(24)] Technology--any and all of the following resulting or arising from work funded by the grant:

(A) inventions;

(B) proprietary and confidential information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

#### §703.3. *Grant Applications.*

(a) The Institute will accept grant applications for cancer research and prevention programs to be funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute in response to standard format requests for applications that will be publicly issued by the Institute at least annually. The requests for applications will be announced in the *Texas Register* and available through the Institute's public website.

(b) The Institute reserves the right to modify the format and content requirements for the requests for applications from time to time. Notice of modifications will be announced in the *Texas Register* and available through the Institute's public website.

(c) Requests for cancer research and cancer prevention grant applications issued by the Institute may address, but are not limited to, the following areas:

(1) Basic research;

(2) Translational research, including proof of concept, pre-clinical, and product development activities;

(3) Clinical research;

(4) Population based research;

[(1) Short-term, high-impact programs;]

[(2) Individual investigator awards;]

~~{(3) Multiple investigator awards, including collaborative projects, centers, core facilities, shared instrumentation, and infrastructure;}~~

~~{(4) Recruitment to the state of new, emerging, and established investigators;}~~

(5) Training;

(6) Recruitment to the state of cancer researchers;

(7) Infrastructure, including centers, core facilities, and shared instrumentation;

~~{(6) Translational research, including proof of concept, preclinical, and clinical trials;}~~

~~{(7) Commercialization investment grant awards, including cancer-related infrastructure and services to support development of commercializable products; and}~~

(8) Implementation of the *Texas Cancer Plan*; and~~{-}~~

(9) Evidence based cancer prevention education, outreach, and training, and clinical programs and services.

~~{(d) Requests for cancer prevention grant applications issued by the Institute may address, but are not limited to, the following areas:}~~

~~{(1) Innovation awards;}~~

~~{(2) Education, outreach and training;}~~

~~{(3) Evidence based prevention programs and services;}~~

~~{(4) Collaborative projects;}~~

~~{(5) Infrastructure/capacity building grants; and}~~

~~{(6) Implementation of the Texas Cancer Plan.}~~

(d) ~~{(e)}~~ The request for applications shall seek information from applicants regarding whether the proposed project has product development [commercial] prospects, including, but not limited to anticipated regulatory filings, commercial abstracts or business plans.

(e) An applicant shall be eligible for only the award type specified by the request for applications under which the application was submitted.

(f) Failure to comply with the material and substantive requirements set forth in the request for applications may serve as grounds for disqualification from further consideration of the grant application by the Institute. For purposes of this subsection, "material requirements" includes the submission of an application via the Institute's on-line application receipt system by the deadline, if any, stated in the request for applications. Nothing in this rule shall prohibit the Institute from extending the deadline for submission.

(g) The Institute will undertake reasonable efforts to protect information submitted to the agency by third parties from unauthorized disclosure, consistent with the need for objective review of the application and the requirements of state law, including the establishment of procedures to be followed by Oversight Committee members, Institute employees, and scientific research and prevention program committee members.

(h) The following information is public information and may be disclosed under Chapter 552, Government Code:

(1) The applicant's name and address;

(2) The amount of funding applied for;

(3) The type of cancer to be addressed under the proposal;

[and]

(4) The high-level summary of the application specifically created to be publicly disclosed; and

(5) [(4)] Any other information designated by the Institute with the consent of the grant applicant.

(i) To assist the Institute in identifying and protecting the confidentiality of information submitted to the agency, the applicant shall identify all confidential and proprietary information on the application or other documents provided to the Institute. However, the applicant's failure to identify information as confidential and proprietary does not constitute a waiver of the designation for purposes of Chapter 552 of the Government Code, or other applicable federal or state law or regulation.

(j) In addition to the other requirements set forth in this chapter and the request for applications, to be eligible to be considered for grant funding, the applicant shall certify that it has not made and will not make a donation to the Institute or any foundation specifically created to benefit the Institute. For purposes of this certification, the applicant includes an employee, officer or director of the applicant, or a person who is second-degree consanguinity or affinity to an employee, officer or director of the applicant. The certification shall be made at the time the application is submitted. One or more Institute employees, including at least the Compliance Officer, shall compare the list of applicants to a current list of donors to the Institute and any foundation specifically created to benefit the Institute. In the event that an applicant or a person who is second-degree consanguinity or affinity to an employee, officer or director of the applicant appears to be a donor to the Institute or any foundation specifically created to benefit the Institute, the Institute shall seek information from the applicant to resolve any issue and take appropriate action.

(k) Applicants shall identify by name all sources of funding, including a capitalization table that reflects private investors, contributing to the project proposed for Institute funding. This information includes those who have an investment, stock or rights in the project and shall be made available to scientific research and prevention program committee members, Institute employees, and Oversight Committee members for purposes of identifying potential conflicts of interest prior to reviewing or taking action on the grant application.

#### *§703.5. Scientific Research and Prevention Programs Committee Members.*

(a) The Executive Director, with approval of a simple majority of the Oversight Committee, will appoint experts in the fields of cancer research, prevention or life science product development ~~[commercialization]~~ to serve as members of scientific research and prevention programs committee for terms designated by the Executive Director. An individual is considered provisionally appointed to the scientific research and prevention program committee until such time that the individual can be approved by the Oversight Committee. The provisional appointee may participate in the review process prior to vote of the Oversight Committee on the appointment so long as the appointment is considered at the next scheduled Oversight Committee meeting.

(b) An individual appointed to serve as a member of a scientific research and prevention programs committee may be a resident of another state. The Institute will rely upon scientific research and prevention program committee members who live and work outside of the state unless a special need justifies using one or more individuals that live or work in Texas. If an individual who lives or works in Texas is appointed to serve as a member of the scientific research and prevention program committee, an explanation of the special need must be provided at the time of the appointment and recorded in the minutes of the Oversight Committee.

(c) Scientific research and prevention programs committee members are responsible for reviewing the scientific research and prevention programs grant applications assigned to the individual member's committee.

(d) Scientific research and prevention programs committee members may receive an honorarium.

(e) A member of a scientific research and prevention programs committee is prohibited from attempting to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(f) A member of a scientific research and prevention programs committee must comply with the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Health and Safety Code.

(g) The scientific research and prevention program committee member, the member's spouse, or other immediate family member of the committee member shall not provide professional services for compensation exceeding \$5,000 to any grant recipient that was reviewed by the member's scientific research and prevention program committee. The term of this restriction is for a period of one year from the effective date of the grant award, unless waived by a vote of the Oversight Committee.

(h) The Institute shall provide a list on its website of the scientific research and prevention program committee members by panel for the current review cycle. For the purpose of identifying undisclosed conflicts of interest, an applicant will be notified of the panel to which the application has been assigned.

#### §703.6. Grants Review Process.

(a) The Institute will use the grants review process to identify the most creative~~[-]~~ and innovative evidence based prevention interventions, [projects representing the best] science and, if appropriate, cancer research product development [commercial] prospects. To the extent possible, priority for funding for cancer research and cancer prevention applications will be given to proposals that:

(1) Could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;

(2) Strengthen and enhance fundamental science in cancer research;

(3) Ensure a comprehensive coordinated approach to cancer research and prevention;

(4) Are interdisciplinary or interinstitutional;

(5) Address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention, or cures for cancer;

(6) Are matched with funds available by a private or non-profit entity and institution or institutions of higher education;

(7) Use money from the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute to obtain additional cancer research and prevention funding from other sources;

(8) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(9) Have a demonstrable economic development benefit to this state;

(10) Enhance research superiority at institutions of higher education or in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources; ~~and]~~

(11) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities; ~~and[-]~~

#### (12) Address the priorities of the *Texas Cancer Plan*.

(b) Based upon the number of applications received and the resources available for the scientific research and prevention program committees, the Institute reserves the option to conduct an initial evaluation of the grant applications by one or more scientific research and prevention program committee members ~~[committees]~~. An application determined to be ~~[incomplete or otherwise]~~ noncompetitive based upon the score assigned during the initial evaluation will not be considered ~~[for]~~ further ~~[review]~~.

(c) Grant applications that are not eliminated in the initial peer review evaluation will undergo a rigorous peer review process supervised by the Institute in coordination with the Scientific Review Council, the Prevention Review Council and the Product Development [Commercialization] Review Council, as may be appropriate to the subject matter of the applications.

(d) Based upon the results of the peer review process and in consideration of the standards described in subsection (a) of this section, as applicable, each scientific research and prevention program committee shall submit to the appropriate [Scientific Review Council, Prevention Review Council or the Commercialization] Review Council the grant applications that the committee recommends should be considered for funding awards. If the scientific research and prevention program committee recommends changes to the funding amount requested for one or more applications recommended for funding, the specified amount of the funding and the reasons for the change shall also be submitted to the Review Council.

(e) Grant funding recommendations made by individual research and prevention program committees will be further evaluated and prioritized by the Scientific Review Council, the Prevention Review Council and the Product Development [Commercialization] Review Council as may be appropriate to the subject area of the applications.

(f) Pursuant to a schedule developed by the Executive Director, the ~~[Scientific Review Council, the Prevention Review Council, and the Commercialization] Review Councils [Council]~~ will submit a prioritized list of grant funding recommendations to the Executive Director and the Oversight Committee at the same time. The list of grant funding recommendations will include a statement of how the grant applications recommended for funding meet one or more standards of subsection (a) of this section. If the Review Council recommends one or more applications for funding that has a less favorable score than a final score assigned to one or more applications that are not recommended for funding, a written explanation shall be provided documenting the reasons for funding the application or applications. If the Review Council recommends a funding amount for one or more applications that varies from the amount requested in the application, a written explanation for the change shall be provided along with the list. The Review Council may make additional recommendations for changes to funding amounts requested. The Councils must specify the amount of funding and the reasons for the change.

(g) The decision to recommend a grant application for funding is entirely within the purview of the scientific research and prevention programs committee(s) evaluating the grant application.

(h) An applicant shall not contact a scientific research and prevention programs committee member regarding the status or substance of any grant application.

(i) Prior to receiving access to confidential and proprietary information submitted by a grant applicant, all individuals, including scientific research and prevention programs committee members, Institute [CPRIT] employees, Oversight Committee members, and grants management system employees shall certify that confidential and proprietary information will not be disclosed or used in any way other than for the purposes of evaluating and awarding grants. The certification may be accomplished by signing a non-disclosure agreement. The Institute will retain the signed certifications ~~on file~~.

(j) The Institute shall engage an independent third party to observe meetings of the scientific research and prevention program committees, including Review Council meetings, where grant applications are discussed.

(1) The independent third party shall serve as a neutral observer to document that the Institute's grant review processes are followed, including observance of the Institute's established conflict of interest processes and that participation by Institute employees, if any, is limited to providing input on the Institute's grant review process and responding to committee questions unrelated to the merits of the application. Institute program staff shall not participate in a discussion of the merits of an application.

(2) The independent third party reviewer shall issue a report to the compliance officer specifying issues, if any, that are inconsistent with the Institute's established grant review processes.

(k) At the time that the scientific research and prevention program committee submits its grant funding recommendations, each committee member shall certify in writing that the member complied with the Institute's conflict of interest rules.

#### *§703.7. Executive Director's Funding Recommendation.*

(a) Upon receipt of the grant award funding recommendations from the Review Council, the Executive Director shall notify the Compliance Officer. The Compliance Officer shall review the process documentation for each application recommended for funding and shall report the findings to the Executive Director and to the Oversight Committee at the same time. The Compliance Officer's report shall be provided to the Oversight Committee before the Oversight Committee considers the grant award funding recommendations.

(b) The Executive Director shall submit to the Oversight Committee a prioritized list of applications to be awarded cancer research grants and cancer prevention program grants substantially based upon the lists submitted by the [Scientific Review Council, the Prevention Review Council and the Commercialization] Review Councils [Council]. The Executive Director's recommendations submitted to the Oversight Committee shall include the following items:

(1) Written documentation of the factors considered in deciding on the grant recommendations, including an explanation for a variance, if any, from the list of applications recommended by the Review Council;

(2) An affidavit for each grant recommendation certifying that the application was subject to the peer review process;

(3) The peer review results, including an overall final score, intellectual property report, and due diligence report, if applicable, for each grant recommendation;

(4) A list of all applications submitted for the particular grant type along with the overall final score for each application;

(5) The Review Council's written justification for recommending an application for funding, if any, that has a less favorable score than a final score assigned to one or more applications not recommended for funding;

(6) The Review Council's written justification for recommending a change in the amount of the award if it varies from the amount requested in the application; and

(7) A list of applications, if any, that the Executive Director recommends should receive an advance of grant funds upon execution of the grant award contract. The list shall include the reasons supporting the recommendation to advance funds.

(c) After the Oversight Committee has taken final action on the Executive Director's recommendations, the following information shall be made publicly available.

(1) Written documentation of the factors considered in recommending the grant awards;

(2) The Executive Director's affidavit for each grant award recommendation certifying that the application was subject to the peer review process;

(3) A de-identified list of all applications submitted for the particular grant type along with the overall final score for each application. The de-identified list shall denote the applications recommended for grant awards; and

(4) The Review Council's written explanation documenting the reasons for recommending an application for a grant award, if any, that has a less favorable score than a final score assigned to one or more applications not recommended for funding.

#### *§703.8. Consideration of ~~[Overriding]~~ the Executive Director's Funding Recommendation.*

(a) The Oversight Committee shall consider the Executive Director's funding recommendations as a comprehensive slate.

(b) The Executive Director's slate of grant award funding recommendations is approved unless two-thirds of the members of the Oversight Committee vote to disregard the slate of recommendations.

(c) If the Oversight Committee votes to disregard the slate of funding recommendations, the Executive Director may re-submit recommendations for consideration by the Oversight Committee pursuant to a process and time table established by the Oversight Committee. The Oversight Committee may request the appropriate review council to conduct further investigation into issues specified by the Oversight Committee.

(d) The Oversight Committee must approve by a majority vote the Executive Director's recommendation regarding an advance of grant funds for any grant application approved for funding.

(e) At the time that each slate is presented to the Oversight Committee for consideration, the Compliance Officer shall publicly certify that the review process for slate of award recommendations complied with the Institute's administrative rules and procedures, including those stated in the request for applications. The Compliance Officer shall also report to the Oversight Committee on variances, if any, in the review process for the applications that comprise the slate. The Compliance Officer may recommend corrective actions to address variances, if any, and the Oversight Committee may consider and vote upon corrective actions at that time.

#### *§703.10. Awarding Grants by Contract.*

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the grant recipient.

(b) The Oversight Committee may delegate contract negotiation duties to the Executive Director and the General Counsel for the Institute. The Executive Director may enter into a written contract with the grant recipient on behalf of the Oversight Committee.

(c) The contract between the Institute and the grant recipient may include the following provisions:

(1) If any portion of the grant has been approved by the Oversight Committee to be used to build a capital improvement, the contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the grant recipient agrees to repay to the state the grant funds [~~money~~] used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to intellectual property rights and the sharing with the Institute of revenues generated by sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of material created with grant funds or related to the research or prevention program that is the subject of grant funds, including an acknowledgement of Institute funding and copyright ownership, if applicable;

(4) Repayment terms, including interest rates, to be enforced if the grant recipient has not used grant funds [~~money~~] for the purposes for which the grant was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the research project or prevention program, and that the conduct of the project and activities of all investigators are under the scope and direction of the recipient;

(6) A statement that the cancer research project or prevention program is conducted with full consideration for the ethical and medical implications of the research and that the project will comply with all federal and state laws regarding the conduct of the research or prevention program;

(7) An agreement [Standards established by the Oversight Committee pursuant to §102.258 and §102.259, Health and Safety Code, to ensure] that grant recipients, to the extent reasonably possible, use [in a] good faith efforts [effort] to achieve a goal of more than 50 percent of such purchases, purchase goods and services for the project funded by the Institute from suppliers in this state and purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other state law;

(8) An agreement by the grant recipient to submit to regular inspection reviews of the grant project during normal business hours and upon reasonable notice;

(9) An agreement by the grant recipient to present progress reports to the Executive Director on a schedule specified by the contract that includes [include] information [on a grant-by-grant basis] quantifying the amount of additional research or prevention program funding, if any, secured as a result of grant [Cancer Prevention and Research] funding;

(10) An agreement that, to the extent possible, the grant recipient will evaluate whether any new or expanded preclinical testing, clinical trials, product development [commercialization], or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the recipient will abide by the Uniform Grant Management Standards adopted by the Comptroller of Public Accounts [~~Governor's Office of Budget and Planning~~], if applicable;

(12) An agreement that the grant recipient is under a continuing obligation to notify the Institute [~~Executive Director~~] of any adverse conditions that materially impact goals [milestones] and objectives included in the contract;

(13) An agreement that the design, conduct, and reporting of the research or prevention program will not be biased by conflicting financial interest of the applicant or any individuals associated with the grant. This duty is fulfilled by certifying that an appropriate written, enforced conflict of interest policy governs the recipient;[-]

(14) An agreement regarding the amount, schedule, and requirements for advance payment of grant funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the forgoing, the Institute may require that the final ten percent of the grant funds approved for the grant award may be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly financial reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced grant funds were expended. No reimbursements shall be made if the financial status report is not submitted within 30 days of the due date unless a written explanation for the failure to do so has been submitted by the applicant on or prior to the due date and approved in writing by the Executive Director;

(16) A statement certifying that the grant recipient has not made and will not make a contribution, during the term of the award contract, to the Institute or to any foundation established specifically to support the Institute. For purposes of this certification, the grant recipient includes an employee, officer or director of the organization, or a person who is second-degree consanguinity or affinity to an employee, officer or director of the applicant organization;

(17) A statement specifying the agreed effective date of the award contract. If the effective date is different from the date the contract is signed by both parties, then the effective date will control;

(18) A statement providing for reimbursement with grant funds of expenses expended prior to the effective date of the award contract. Such a decision to approve the request for pre-contract reimbursement is at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the award contract;

(B) The request is made in writing by the grant recipient and approved and signed by the Executive Director; and

(C) The expenses to be reimbursed were incurred on or after the date the grant award recommendation was publicly announced;

(19) Requirements for closing out the award contract at the termination date, including the submission of a final financial status report, a final equipment inventory, a final progress report on the performance of the project, and a list of contractual terms that extend beyond the termination date. The final reimbursement payment shall not be made until such close out documents have been submitted and approved by the Institute. Failure to submit close out documents within six months of the contract termination date may result in the grant recipient being ineligible for other Institute grants until such time that the close out documents are submitted.

(d) The grant recipient's failure to comply with the contract provisions may result in termination of the contract.

*§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.*

(a) At the time the [of] award contract is executed and for each year thereafter as may be appropriate, a cancer research grant recipient must certify in writing that encumbered funds equal to one-half of the amount of the total grant are available and not yet expended for research that is the subject of the grant. The written certification shall be included in the grant award contract. Recipients receiving multiple grant awards may provide certification at the institutional level. A grant award contract shall not be executed without such certification of encumbered funds for at least the first year of the project. Failure to provide certification of encumbered funds at the appropriate time for each year of the project thereafter shall serve as grounds for terminating the award contract.

(b) For purposes of the certification required by subsection (a) of this section, a recipient may use the following categories to classify encumbered funds that are dedicated to cancer research:

- (1) Cancer biology and genetics, including oncogenesis and collection and characterization of tumors (genomics, proteomics, and other "omics");
- (2) Cancer immunology, including vaccines;
- (3) Cancer imaging and diagnostics;
- (4) Population based research [Cancer epidemiology] and outcomes research; and
- (5) Cancer treatment, including drug discovery and development and clinical trials.

(c) For purposes of the certification required by subsection (a) of this section, encumbered funds may include but are not necessarily limited to:

- (1) Federal funds (including American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute (NCI) or other similar programs);
- (2) State of Texas funds;
- (3) Other States' funds;
- (4) Non-governmental funds (including private funds, foundation grants, gifts and donations); and
- (5) Unrecovered indirect costs not to exceed 10 percent of the grant award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the grant as the five percent indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Institution or recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The allowance for unrecovered indirect costs must be specifically approved by the Executive Director.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as encumbered funds:

- (1) In-kind costs;
- (2) Volunteer services furnished to the grant recipient;
- (3) Noncash contributions;
- (4) Income earned not available at the time of award;
- (5) Pre-existing real estate including building, facilities and land;
- (6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or
- (7) Other items as may be determined by the Oversight Committee.

(e) For awards to investigators representing more than one institution or organization, the certification required by subsection (a) of this section may be made on a grant-award level by one or more of the participating institutions or organizations.

(f) The recipient of a multiyear grant award may demonstrate available funds on a year-by-year basis. In no event shall grant funds for an award year be advanced or reimbursed, as may be appropriate for the grant award, until the certification required by subsection (a) of this section is filed and accepted by the Institute for the advanced or reimbursed funds.

(g) No later than 60 days from the anniversary of the effective date of the award contract, the grant recipient shall file a form with the Institute reporting how encumbered funds reported in the certification required by subsection (a) of this section were spent.

(h) The grant recipient shall maintain adequate documentation supporting the source and use of the encumbered funds reported in the certification required by subsection (a) of this section and shall provide such information to the Institute upon request.

(i) The Institute shall conduct an annual review of the documentation supporting the source and use of encumbered funds reported in the required certification for a statistically significant sample of grant recipients. Based upon the results of the statistical sample, the Institute may expand the review of supporting documentation to other grant recipients. Nothing in this rule prohibits the Institute from reviewing supporting documentation for all grant recipients.

*§703.13. Audits.*

(a) Upon request and with reasonable notice, the grant recipient and any contractor or collaborator paid with grant funds, shall allow, or shall cause the entity which is maintaining such items to allow, the Institute, or auditors working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract all of its records during regular working hours for a period of four (4) years from the termination date of the Contract. [The Institute shall have the right to request in writing and receive from the recipient in a reasonable time-frame any and all documents and other information related to the grant at any time during or for four years after the term of the grant expires. This right includes, but is not limited to, the right to review all financial books and records of the recipient related to the grant and to perform an audit or other accounting procedures of all expenses related directly



or indirectly to the grant. To the extent that confidential information must be disclosed during the course of the audit, the Institute and its employees will execute a non-disclosure agreement with the grant recipient.]

(b) Notwithstanding the foregoing, any grant recipient expending \$500,000 or more in state awards during its fiscal year shall obtain either an annual single independent audit or a program specific independent audit. A single audit is required if funds from more than one state program are spent by the grant recipient. The audited time period is the grant recipient's fiscal year, not the Institute funding period. The audit must be submitted no later than nine months following the close of the grant recipient's fiscal year.

(c) No reimbursements or advances of grant funds shall be made to the grant recipient if a required audit is not submitted by the grant recipient within 30 days of the due date unless a written explanation for the failure to do so has been submitted by the applicant on or prior to the due date and approved in writing by the Executive Director.

#### §703.21. Monitoring Grant Award Performance.

(a) The Institute, under the direction of the Compliance Officer and appropriate program staff, shall monitor the performance of the grant recipient through the submission of a progress report completed by the grant recipient at least annually in a form specified by the Institute.

(b) The annual progress report shall be submitted by the grant recipient via an electronic portal designated by the Institute within 60 days of the anniversary of the effective date of the grant award contract.

(c) The annual progress report shall include at least the following information:

(1) A verification of the grant recipient's compliance with the terms of the contract;

(2) A description of the progress made toward completing the scope of work specified by the award contract, including information and data regarding the progress to achieve the project goals and timelines;

(3) A statement of the project goals for the twelve month time period following the submission of the annual report;

(4) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of grant funds awarded to the grant recipient;

(5) An inventory of the equipment purchased in the preceding twelve month period using grant funds awarded to the grant recipient;

(6) A Historically Underutilized Businesses report;

(7) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(8) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(9) An explanation for deviating from the approved budget for the preceding twelve months, including a statement why the grant award amount should not be reduced, if the grant recipient has expended 80% or less of the total annual budget for the preceding twelve months;

(10) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(11) A statement of the grant recipient's efforts to secure additional funding for the project from sources other than the Institute; and

(12) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received from the project.

(d) The progress report shall be reviewed by one or more grant managers. The progress report review shall be subject to the Institute's conflict of interest rules.

(e) The written evaluation of the progress report by the grant manager shall state whether the grant recipient has made sufficient progress pursuant to the scope of work and project goals and timelines included in the award contract. The chief program officer shall review the progress report evaluations. In the event that the progress report evaluation finds that the grant recipient is not making sufficient progress, the chief program officer shall recommend in writing to the Executive Director whether the grant award contract shall be terminated or modified. The grant recipient shall be afforded an opportunity to respond to the recommendation to terminate or modify the award contract pursuant to a process established by the Institute.

(f) The Executive Director and the chief program officer shall present a summary report of the grant award progress evaluations to the Oversight Committee at a public meeting. A final decision to terminate or modify an award contract based on the progress report evaluation shall be by vote of a majority of the Oversight Committee members.

(g) Nothing in this rule prevents the Institute from using other methods to monitor grant performance and progress, including site visits or performance audits, or from requiring progress reports on a more frequent basis.

(h) Failure to submit a progress report within 30 days of its due date without a written explanation submitted prior to the due date and approved in writing by the Executive Director is grounds for termination of the award contract.

(i) The final progress report shall be submitted within 90 days of the termination date of the contract. The final reimbursement payment will be withheld until such time that the final progress report has been submitted and approved by the Institute. Failure to submit a final progress report within six months of the contract termination date may result in the grant recipient being ineligible for other Institute grants until such time that the final progress report is submitted and approved by the Institute.

#### §703.25. Compliance and Ethics Program.

(a) The Institute shall employ a Compliance Officer to operate the compliance and ethics program adopted by the Institute that:

(1) is designed to detect and prevent violations of the law, including regulations, and ethical standards applicable to the Institute or its Oversight Committee or employees;

(2) satisfies all requirements of this section; and

(3) enforces compliance with its ethics and compliance program.

(b) The ethics and compliance program must be in writing and must provide compliance standards and procedures that the Institute's Oversight Committee, employees and contract service providers are expected to follow. At a minimum, the program must provide that:

(1) high-level personnel are responsible for oversight of compliance with the standards and procedures;

(2) appropriate care is being taken to avoid the delegation of substantial discretionary authority to individuals whom the Institute knows, or should know, have a propensity to engage in illegal activities;

(3) compliance standards and procedures are effectively communicated to all of the Institute's employees and members of the Oversight Committee, by requiring them to participate in periodic training in ethics and in the requirements of the program;

(4) compliance standards and procedures are effectively communicated to all of the Institute's contract service providers;

(5) reasonable steps are being taken to achieve compliance with the compliance standards and procedures by:

(A) using reporting, monitoring and auditing systems that are designed to reasonably detect noncompliance; and

(B) providing and publicizing a system for the Institute's employees, grant applicants, grant recipients, and contract service providers to report suspected noncompliance without fear of retaliation;

(6) consistent enforcement of compliance standards and procedures is administered through appropriate disciplinary mechanisms;

(7) reasonable steps are being taken to respond appropriately to detected offenses and to prevent future similar offenses; and

(8) the Institute has a written Code of Ethics and Conduct adopted by the Oversight Committee that, at a minimum, addresses:

(A) record retention;

(B) fraud;

(C) equal opportunity employment;

(D) sexual harassment and sexual misconduct;

(E) conflicts of interest;

(F) personal use of the Institute's property; and

(G) gifts and honoraria.

(c) The Compliance Officer will report, at least annually, to the Oversight Committee in a public meeting on the compliance activities of the Institute, including any proposed legislation or other recommendations identified through the activities. A copy of the report will be provided to the chairpersons of the appropriate legislative committees.

§703.26. Complaint, Reporting and Investigation of Compliance Violations.

(a) The Oversight Committee, employees, grant recipients, and contract service providers are expected to observe high standards of business and personal ethics in conduct of their duties and responsibilities. The purpose of this section is to set forth the procedures for the good faith reporting of a concern regarding compliance violations.

(b) Submission of a report of suspected violation to Ethics Hotline.

(1) Any person may submit a good faith report of a suspected violation of applicable laws, rules, regulations and policies, financial reporting, internal accounting controls, or audit matters related to the Institute, an Institute employee, an Institute contract for services, or an Institute-funded grant award.

(2) The Institute will contract with an outside vendor to operate an Ethics Hotline (telephonic and electronic mailbox) for the purpose of receiving reports of suspected compliance violations.

(3) A report of a suspected compliance violation shall be made by contacting the independent, toll-free Ethics Hotline or via an online electronic mail address specifically established by the Institute for that purpose. Only reports submitted via these methods will be investigated.

(4) The good faith report of a suspected violation may be made on an anonymous basis. To the extent allowed by applicable law, the report may be kept confidential.

(c) Investigation of a report of suspected violation:

(1) A prompt investigation shall be conducted following the receipt of a report of a suspected violation, and appropriate corrective action will be taken if warranted by the investigation.

(2) For all reported complaints and allegations concerning violations of the ethics policy or code of conduct, the Compliance Officer is responsible for investigating and resolving the issue. The Compliance Officer may enlist Institute employees, outside legal counsel, accounting or other advisors, as appropriate, to conduct any investigation regarding compliance violations.

(3) For all reported concerns or complaints regarding agency or grantee accounting practices, internal controls or auditing, the audit subcommittee of the Oversight Committee is responsible for investigating and resolving such complaints. The Compliance Officer shall immediately notify the audit subcommittee of any such complaint and work with the subcommittee until the matter is resolved. The audit subcommittee may enlist Institute employees, outside legal counsel, accounting or other advisors, as appropriate, to conduct any investigation.

(d) In performing duties under this rule, the Compliance Officer has direct access to the Oversight Committee.

(e) The Compliance Officer will maintain a log of reports on the Ethics Hotline, tracking their receipt, investigation and resolution. The Compliance Officer will report to the Oversight Committee at least quarterly on compliance Ethics Hotline activity.

(f) To promote the Ethics Hotline and make it available to the public, Hotline information and the toll-free number shall be posted on the Institute's public website and included in all Institute contracts and agreements. The information shall also be discussed in staff meetings and ethics training sessions. The information shall also be included in the Employee Policies and Procedure Manual.

(g) The Ethics Hotline is not intended for handling employee grievances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300953

Wayne Roberts

Executive Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 305-8422



## TITLE 30. ENVIRONMENTAL QUALITY

# PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 106. PERMITS BY RULE

### SUBCHAPTER O. OIL AND GAS

#### 30 TAC §106.359

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §106.359.

#### Background and Summary of the Factual Basis for the Proposed Rule

This proposed rulemaking will add a new permit by rule (PBR) to authorize emissions from planned maintenance, startup, and shutdown (MSS) activities and facilities at oil and gas handling and production facilities. It is intended that this proposed PBR will be used in addition to a construction authorization at an oil and gas site (OGS). In the context of this proposed PBR, construction authorization means the PBR, standard permit, or New Source Review (case-by-case) permit that authorizes the production emissions at an OGS.

Historically, the rules of the commission and its predecessor agencies have not specifically required authorization of MSS activities. However, in December 2005, the commission established deadlines for different facility (as defined in Texas Health and Safety Code (THSC), §382.003(6)) types to submit an application to authorize planned MSS emissions or lose the ability to claim an affirmative defense for unauthorized emissions during those activities. The deadlines were adopted into 30 TAC §101.222(h). For oil and gas facilities under Standard Industrial Codes (SIC) 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution), the deadline was January 5, 2012. This date was subsequently changed to January 5, 2014, by the 82nd Legislature, 2011, when Senate Bill (SB) 1134 was adopted into law, now codified in THSC, §§382.051961 - 382.051964. The THSC is also known as the Texas Clean Air Act. This proposed PBR will provide applicants a streamlined authorization mechanism for planned MSS to meet the statutory deadline.

Specifically, THSC, §382.051962(c), states, "an unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section, June 17, 2011, if: (1) the emission or opacity event occurs at a facility described by Section 382.051961(a); (2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of: (A) January 5, 2014; or (B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and (3) the affirmative defense criteria in the rules are met. (d) The affirmative defense described by §382.051962(c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided."

Furthermore, THSC, §382.051962 states planned MSS activity "means an activity with emissions or opacity that: (1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility; (2) is part of normal or routine facility operations; (3) is predictable as

to timing; and (4) involves the type of emissions normally authorized by permit."

In addition to establishing a new deadline for the submission of applications to authorize planned MSS emissions for oil and gas facilities, THSC, §382.051962 authorizes the commission to adopt PBRs or standard permits and to amend existing PBRs or standard permits to authorize planned MSS activities for OGS. The statute also establishes actions the commission is required to take to adopt new or revise rules for oil and gas facilities. Specifically, for any new PBRs or standard permits or revisions to PBRs or standard permits, THSC, §382.051961 requires that the commission: conduct a regulatory analysis in accordance with the Texas Government Code; conduct an evaluation of credible air quality monitoring data to determine if emission limits or emissions-related requirements are needed to ensure protection of public health; use credible air quality monitoring data and credible air quality modeling that is not based on worst-case scenarios to determine emissions limits; and consider whether the requirements of the permit should be imposed on particular geographic regions of the state.

According to Texas Railroad Commission records as of January 2012, there are almost 400,000 active oil and gas wells in the state. Construction of many OGSs may be authorized by claiming a PBR (§106.352, Oil and Gas Handling and Production Facilities) or standard permit (30 TAC §116.620, Installation and/or Modification of Oil and Gas Facilities). Some companies have chosen to include planned MSS emissions in their construction authorization. However, of the more than 10,000 oil and gas projects reviewed by the commission in the last four years, only a small percentage has voluntarily included planned MSS activities. PBR §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities, may authorize planned MSS emissions for some oil and gas related activities. However, it is limited in scope and specifically precludes its use for facilities authorized under the most common oil and gas construction authorizations, such as PBRs, §106.352 and §106.512, Stationary Engines and Turbines. There is currently no specific PBR available for OGSs that covers all known planned MSS activities. Instead of requiring previously registered sites to revise existing authorizations, the commission is proposing this new PBR to provide an effective authorization mechanism of all planned MSS at an OGS.

#### *What information did the commission use to develop the proposed PBR?*

The commission conducted significant research to develop the proposed rule. Staff analyzed oil and gas registrations submitted to the agency and conducted further review of the projects that included representations regarding planned MSS activities. The commission formed a rule team with representatives from the following commission programs: air permitting, air quality, compliance and enforcement (investigators), legal, monitoring, small business assistance, and toxicology. The commission consulted with oil and gas permitting consultants, equipment vendors, and maintenance contractors. Staff reviewed relevant academic texts and gained significant details through the stakeholder process. The commission used existing monitoring data, including results from a specific monitoring project and air canister sampling data. The commission also conducted a case study regarding emissions events and reviewed state-wide benzene emission monitoring data evaluated by TCEQ's Toxicology Division. This information was used to develop the framework for the proposed PBR, the specific requirements,

and the modeling scenarios used to support the proposed PBR requirements.

To determine what types of planned MSS activities are conducted at OGSs across Texas, the commission analyzed over 1,200 oil and gas projects submitted to the commission between January and March, 2012. Over 375 (approximately 31%) of these recent projects represented planned MSS activities. The representations in the submitted projects helped the commission evaluate which activities are appropriate for authorization under this proposed PBR.

The commission reviewed Chapter 116, Subchapter B, New Source Review Permits, (case-by-case) permits for petroleum refineries to gain additional knowledge regarding possible planned MSS activities at OGSs. Emissions associated with planned MSS activities and facilities at OGSs are similar in nature to planned MSS activities and facilities at refineries and chemical plants. The deadline for petroleum refineries (SIC 2911) to submit applications to authorize planned MSS activities was January 5, 2007. Staff evaluated the planned MSS activities represented for these types of sites to determine if there are similar activities conducted at OGSs. Where comparable, staff evaluated how the larger facilities are maintained, how emissions are controlled, and any permit requirements specifically applicable to planned MSS activities or facilities. Staff also reviewed publications from the Petroleum Extension Services at the University of Texas at Austin. The publications describe processes for maintaining equipment in the oil field and are focused on startup. Staff reviewed published procedures and controls (best management practices or BMPs) used by service companies that conduct degassing. Staff also reviewed responses to the Barnett Shale Area Special Inventory conducted by the commission in 2010. The study gathered information on facilities and normal production emissions, but did not contain planned MSS activities. Staff reviewed 58 complaint response investigations from the TCEQ Dallas-Fort Worth regional office. These investigation reports included 49 Summa canister samples.

Stakeholder input was instrumental in the development of this proposed PBR. Multiple stakeholder meetings were held, and over 150 people participated in the stakeholder process. The first meeting was held on September 27, 2012, in Austin at TCEQ headquarters with interactive video teleconference available to stakeholders at TCEQ regional offices in Amarillo, Abilene, Beaumont, Corpus Christi, Fort Worth, Houston, Harlingen, Laredo, San Angelo, Tyler, and Waco. The commission conducted additional meetings in San Antonio on October 1, 2012; in the Dallas-Fort Worth area on October 4, 2012; and in the Midland-Odessa area on October 9, 2012.

At these meetings, the commission explained the purpose of the rulemaking and the general concept and held open discussions with stakeholders. The commission also requested and received additional feedback from stakeholders on details of planned MSS activities at their specific locations and the types of maintenance programs used by the industry. The issues and concerns raised during these informal meetings were either used directly to develop the proposed PBR language, or to guide the scope of the authorization mechanism. The commission requests continued stakeholder involvement during the rulemaking process.

THSC, §382.051961(a)(4) requires that the commission consider whether the requirements of this proposed PBR be imposed on particular geographic regions of the state. Based

on all of the research, analysis, and stakeholder input, the commission determined that maintenance activities at OGSs are substantially the same across the state. This proposed PBR is based on the permit holder's development of a maintenance program for each site, and compliance will be demonstrated through recordkeeping. It is not intended that the requirements of this proposed PBR be imposed on particular geographic regions of the state. This proposed PBR does not address other authorization types that were previously developed to address high volume urban drilling and contain specific MSS requirements for those conditions.

*What typical OGS Planned MSS activities did the commission identify?*

The commission identified various planned MSS activities typical to an OGS based on research and stakeholder involvement. In general, planned MSS activities are conducted to ensure proper functioning of facilities at OGSs. The commission found that MSS activities are planned at OGSs for a variety of reasons including: predetermined intervals based on manufacturer specifications or operational knowledge, operational parameters indicating maintenance is warranted, or as a result of operator inspections.

For the protectiveness review, the commission divided planned MSS activities into two general categories based on their potential for emissions. The majority of planned MSS activities fit into the lower emission activities category. Three activities were identified that have the potential for higher levels of emissions: blowdowns, tank or vessel emptying and refilling, and tank or vessel degassing. The character, quantity, dispersion, frequency, and duration of the lower emission activities result in lower emission impacts. Because of the greater potential for impacts, the protectiveness of the higher emission activities was evaluated using modeling and evaluation of credible air monitoring data. Therefore, it was appropriate to rely on the evaluation of the higher emission activities to ensure protectiveness of the proposed PBR.

#### *Lower Emission Activities*

The commission identified various planned MSS activities that are conducted to ensure equipment is kept in good working order. These activities have negligible emission releases, and as a result, are included in this proposed PBR. The commission is also specifically requesting comments on any other processes that should be considered planned MSS activities with the same character and quantity of emissions as the lower emitting activities listed in this proposed PBR. Although the commission cannot materially alter the scope of the proposed rule, the proposed language is intended to account for different processes or maintenance activities with equivalent character and quantity of emissions that may be identified during the comment period. Additional planned MSS activities identified during the public comment period that are within the category of the lower emission activities may be added to the proposed PBR if appropriate.

Examples of activities evaluated resulting in negligible releases of air contaminants in this proposed PBR include: lubrication and cleaning of OGS equipment, oil and oil filter changes for engines and turbines, sparkplug changes, replacement of oxygen sensors, compression checks, use of lubrication oils, leak repairs, engine overhauls, boiler refractory replacements, boiler and heater cleanings, heat exchanger cleanings, and pressure relief valve testing. Other maintenance activities that occur to ensure process equipment operates at optimum levels include

replacing treatment chemicals, catalysts, and filters. The term "filters" in this proposed PBR includes pipeline strainers, gas and liquid separators, and hydraulic and lubrication oil filters. Replacement of rod packing, pneumatic controllers, and glycol solution in glycol dehydrator vessels is also included in this category of planned MSS activities.

Relying on extensive research completed for previous rule packages in 2010 and 2011, staff determined that planned startup and planned shutdown emissions from engines and turbines are not expected to be any higher than normal operations. The emissions from operation of engines and turbines were determined to be protective of human health and the environment under the construction authorizations currently available for engines and turbines. Therefore, planned MSS activities for engine and turbine maintenance are authorized under this proposed PBR.

#### *Higher Emission Activities*

The commission identified three types of planned MSS activities at OGSs that have the potential for higher emissions: blowdowns, tank or vessel emptying and refilling, and tank or vessel degassing.

#### *Blowdowns*

Various types of blowdowns are conducted as needed for maintenance at OGSs, such as compressor blowdowns and piping blowdowns. In addition to being a maintenance activity itself, blowdowns are conducted as the first step of maintenance activities for some OGS equipment. For example, a blowdown to relieve pressure is performed before compressor maintenance can be conducted. Additionally, process vessels under pressure must be opened and degassed before maintenance activities.

Staff evaluated over 250 oil and gas projects that represented compressor or piping blowdowns. Compressor blowdowns release gas through a stack or opening prior to maintenance. Compressor blowdown emissions vary depending on the pressure or liquid that remains in the system before the compressor is shut down. Another factor affecting emissions is how often blowdowns are conducted, which is often dependent upon operational conditions. The typical number of blowdowns per year at a particular site may vary. Representations in the projects evaluated ranged from 12 blowdowns per year to 60 blowdowns per year. The duration of blowdowns also varies. The evaluated projects represented blowdowns lasting from five minutes to one hour. The projects typically represented worst-case scenario (conservative) emissions estimates.

Pipe blowdowns are conducted by draining liquids from the piping or vessel, opening valves, and releasing the gas in the piping. The piping must be cleared of natural gas before associated process vessels under pressure can be opened and degassed. Pipe blowdowns also occur with pigging operations. A device called a pig is inserted into the piping and gas is used to force the pig through the line. The emissions from a pipe blowdown are a function of: the characteristics of what is in the pipeline, the size and length of piping, equipment connected to the system, line pressure, the number of equipment discharges, and the use of blowdown system controls.

In all of the projects reviewed, worst-case scenario or conservative emissions were represented. The emission representations for both compressor and pipeline blowdowns in submitted projects typically ranged from 0.01 to 25 pounds per hour (lb/hr) of volatile organic compounds (VOC) for short-term (hourly) emissions. Long-term (annual) emissions ranged from 0.01 to

approximately 4.0 tons per year (tpy). The commission modeled blowdowns using this data, and the results are included in the Protectiveness Review section of this preamble.

#### *Tanks and Vessels*

Facilities such as pressurized and non-pressurized process vessels, associated piping, and fugitive components require periodic inspection, cleaning, and maintenance. Planned MSS activities for tanks and vessels consist primarily of emptying, purging or degassing, cleaning, refilling or recharging, and returning the system to service. The emissions associated with emptying and refilling tanks were less than the emissions from degassing. Therefore, the commission modeled degassing to determine protectiveness of both activities.

#### *Tank or Vessel Emptying and Refilling*

The commission evaluated emissions from emptying tanks or vessels, as planned shutdown of these facilities, and the refilling of the tanks or vessels as planned startup.

Based on PBR and standard permit projects, 500 and 1,000 barrel (bbl) fixed roof tanks and 100,000 bbl floating roof tanks were considered, because they are typical tank sizes at OGSs. The minimum short-term emissions are associated with passive vapor expansion, and are approximately 0.5 to 32 lb/hr of potential VOC emissions. These emissions were calculated using the ideal gas law, which describes how the pressure of the gas is related to the temperature, volume, and amount of substance in the storage tank.

AP-42, Fifth Edition, Section 7 details procedures for estimating emissions from emptying, degassing and refilling tanks. Emissions are estimated using ambient temperature, Reid Vapor Pressure (RVP), true vapor pressure, vapor molecular weight, tank size, and type. Potential emissions from emptying, degassing, and refilling tanks or vessels were estimated using a light condensate oil (industry refers to this as natural gasoline) assuming a molecular weight of 50, a true vapor pressure of 9.11 pounds per square inch absolute (psia) at 95 degrees Fahrenheit and a 60% saturation of the vapor space.

There is an increasing trend of large, floating roof tanks being used in the oil and gas industry. Unlike fixed roof tanks, floating roof tanks minimize vapor space and reduce emissions by allowing the roof to float on the surface of the stored liquid. When the roof is landed for maintenance, vacuum breakers open and the area of the tank below the roof becomes like a fixed volume vessel. Keeping the seals in good working order and landing the roof on its legs are examples of BMPs for tank maintenance.

Occasional, planned operational landing of floating roof tanks will occur, and is considered a planned shutdown activity. The refilling of these tanks is considered planned startup. Short-term emissions from a tank with a landed roof or an empty tank can be greater than the routine operating emissions; therefore it is BMPs that tanks should be filled and back in normal operation as safely and quickly as possible. Staff estimated that quantifying emissions associated with operational landing of floating roof tanks or operational emptying of fixed roof tanks for 50 hours per year is a reasonable approach due to the infrequency of the activity. Estimated emissions associated with these activities were based on these hours and account for the wide variety of tank sizes and types. Convenience landings are not considered operational landings and are not proposed to be authorized under this PBR.

#### *Tank or Vessel Degassing*

Degassing (purging), the third planned MSS activity that has the potential for higher MSS emissions is the removal of vapors from storage tanks in order to perform maintenance. Once a tank is emptied, residual liquids are drained from the tank and valves or hatches are opened to release the remaining vapors. Tank clean outs and degassing occur as needed for operations or regulatory compliance. Some tank interiors are cleaned infrequently, such as once every several years, or only before the tanks are moved off site.

Staff evaluated 20 oil and gas projects that represented degassing and purging of fixed roof tanks, floating roof tanks, and vessels such as separators. The commission evaluated non-pressurized tanks degassed with minimal flow rates as well as pressurized tanks and tanks degassed with the use of forced ventilation.

When a fixed volume tank, vessel, or floating roof tank is purged of liquids (except for heels and clingage) the vapor space will be partially saturated with vapors. The level of saturation is dependent on the rate and degree to which the vessel is purged and the length of time after which it is emptied. The standard environmental engineering approach to estimating emissions is an average saturation of 60%. This can be used to estimate the amount of vapor that will be pushed out when the vessel is refilled or degassed. If the tank is not purged by force, then it will have breathing losses associated with passive vapor expansion. The critical factors are the volume of the vessel and the concentration of the vapor, which affect the potential short-term emission rate. If the space is forcefully purged with blowers, which is common for maintenance purposes, it can be completed in a few hours rather than days.

The greater short-term emission rate is associated with degassing using forced ventilation. A purge using a 1,000 cubic foot per minute (cfm) blower for a 500 bbl fixed roof tank would be expected to have approximately 130 lb/hr of VOC for condensate. On larger tanks, a 5,000 cfm blower for a 100,000 bbl floating roof tank would be expected to have approximately 3,850 lb/hr of VOC for condensate. The proposed PBR requires that degassing by forced ventilation and use of vacuum trucks to empty tanks are limited to a single tank or vessel at a time, based on these emission rates.

Floating roof tanks must be landed before beginning the degassing process. Information gathered during the stakeholder participation process indicated that BMP for degassing large floating roof tanks (100,000 bbl) includes either routing the emissions to a control device or directing the emissions out the top of a tank. This venting method is possible as long as the air flow does not exceed the rating of the vacuum breakers or compromise the integrity of the tank. Allowing degassing at ground level without control can create explosive conditions and expose workers to emission concentrations that exceed standards regulated by the United States Occupational Safety and Health Administration (OSHA). Controlling or directing emissions out the top of a tank is consistent with documented industry practice regarding tank degassing and cleaning.

The stakeholder process identified an additional planned MSS activity that does not fit into the lower or higher emission activities category. Over the past year, investigators in the TCEQ Midland Regional office have identified approximately 20 mobile surface coating operations that are conducting activities at oil and gas sites across the region. Typically the surface coaters are conducting abrasive blasting and coating of both fixed and portable equipment. Many of these sites are located miles away

from a permanent surface coating location and it is not economically practical to move the portable equipment to a permanent surface coating location and then back out to the field. It is likely that this type of activity is being conducted in other parts of the state where the oil and gas industry is operating and abrasive blasting and coating of tanks is a crucial part of tank maintenance. Therefore, the commission evaluated abrasive blasting and coating activities for this proposed PBR.

The preamble to §106.263 (October 26, 2001, issue of the *Texas Register* (26 TexReg 8523)) states that the emissions from blasting and coating fixed objects have a record of insignificant emissions. This same determination is applied in this proposed PBR to include the surface preparation and coating of equipment and supporting structures (buildings or fencing) that is used at the site in oil and gas handling or production. This allows flexibility for oil and gas operators to perform necessary maintenance on equipment used at a location. Limiting surface preparation and coating to equipment used at the site is intended to prevent the site from being used inappropriately as a surface coating facility that would require construction authorization.

#### *What does the proposed PBR require?*

Based on the analysis of modeling data and correlated monitoring and sampling data, the required use of BMPs will result in reduced short-term and long-term emissions from OGSs. Monitoring data indicates that emissions at levels of concern predominantly result from sites that are not properly maintained or that do not follow BMPs. Authorized emissions from planned MSS activities are short term and result in reduced overall emissions and environmental impact. Therefore, there are no specific hourly emission limits in this proposed PBR. A distance limitation will not be included in this proposed PBR because the construction authorizations for oil and gas facilities already include appropriate distance limits. Permit holders will be required to develop a maintenance program, comply with the recordkeeping requirements in §106.8 (Recordkeeping) and the site-wide emission limits in §106.4 (Requirements for Permitting by Rule).

An owner or operator of an OGS that claims planned MSS emissions under this proposed PBR will be referred to as the permit holder. The proposed PBR will require that the permit holder develop and implement a maintenance program and use BMPs to minimize emissions. A variety of activities can be considered BMPs, for example: timeframes for maintenance activities, prohibition of certain practices, maintenance procedures, operating procedures, and other techniques to control, prevent, or reduce the emission of regulated air contaminants. BMPs may include: following manufacturer's specifications and recommendations or following an operator-developed maintenance program consistent with good air pollution control practices for repairing and maintaining equipment performance, cleaning and routine inspection of all equipment, monitoring operational parameters to predict maintenance needs, closing thief hatches, and handling liquids properly. The proposed PBR will not prescribe all of the specific BMPs that must be followed at each OGS; rather a permit holder will be responsible for determining the appropriate BMPs to minimize emissions, according to industry-wide standards. Recordkeeping will be the primary method for demonstrating compliance with the proposed PBR. Regulating planned MSS emissions through a maintenance program affords flexibility and allows permit holders the ability to adapt the maintenance program as necessary with regard to planned MSS activities.

Planned MSS emissions that meet the conditions of the proposed PBR will not require notification or registration. No paper-

work is required to be submitted to the commission. The ability to claim and not register emissions under specific PBRs has historically been an acceptable option and it is intended that this option be available as part of this proposal.

In the general rule to claim a PBR, §106.8 addresses the record-keeping requirements, which are intended to provide a clear, understandable set of expectations in order to easily demonstrate compliance. Section 106.8 provides explicit requirements and meets the test of practical enforceability, an essential element for all commission authorizations. All necessary records must be kept and contain sufficient information to demonstrate compliance. These records serve to: verify all information used to estimate emissions; verify that planned MSS emissions meet all applicable limits; list current equipment and processes; explain equipment or process changes and associated effects on emissions; and demonstrate that equipment is properly operated, monitored, maintained, and inspected. Any records that are kept for other purposes but provide the required information to support the use of BMPs are sufficient to demonstrate compliance with this proposed PBR.

Additionally, many planned MSS activities (such as blowdowns) are practically and physically indistinguishable from those that occur as a result of emissions events. Therefore, it will be important for the permit holder to record the reason for the planned MSS activity, demonstrating that it meets the requirements of this PBR. In some instances, adequate notice will be given to a permit holder that upstream or downstream actions may result in the need for planned MSS activities at the permit holder's OGS. If adequate notice is given for the affected permit holder to plan a response, minimize the frequency and duration of emissions, and the emissions do not exceed the limits in §106.4, then the activities may be claimed as planned MSS. Records of this notification must be kept to claim the emissions as planned MSS emissions under the proposed PBR.

Because some oil and gas permit holders may not have included planned MSS emissions in their evaluation to determine the appropriate construction authorization, site-wide emissions may need to be recalculated to account for the planned MSS emissions and ensure compliance with any construction authorization limitations. Specifically, in accordance with §106.4, total actual emissions authorized under PBR from the facility shall not exceed 250 tpy of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>); or 25 tpy of VOC, sulfur dioxide (SO<sub>2</sub>), or inhalable particulate matter (PM); or 15 tpy of particulate matter with diameters of 10 microns or less (PM<sub>10</sub>); or 10 tpy of particulate matter with diameters of 2.5 microns or less (PM<sub>2.5</sub>); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen, unless at least one facility at a site has been subject to public notice and comment as required in Chapter 116, Subchapter B or Subchapter D (Permit Renewals). Section 106.4(b) requires that no person shall circumvent by artificial limitations the requirements of §116.110 (Applicability). Permit holders may be required to provide documentation demonstrating site-wide emission totals if requested by commission staff or the local air pollution control program with jurisdiction.

Site-wide emission totals, including planned MSS emissions calculations, should be supported with as much site-specific or representative sampling and testing needed to perform such emissions calculations. For example, a site with an outlet gas stream from a high pressure separator, outlet gas stream from a glycol unit, outlet gas stream from an amine unit, and outlet gas stream

from a low pressure separator may require sampling and testing for all four gas streams to sufficiently complete emissions calculations for pipeline blowdowns. Failure to sample at the appropriate location can result in a mischaracterization and incorrect quantification of emissions.

While the proposed PBR does not require registration or the submission of emission calculations to the commission, the site-wide emissions will need to be quantified to verify the site is operating under the appropriate construction authorization. Planned MSS emissions must be based on a worst-case annual emissions total. For example, planned MSS activities that only occur once every ten years cannot be averaged out over a ten-year period. Emissions from such an event must be considered as part of a worst-case annual emission total and must be accounted for, in its entirety, to support Chapter 106 compliance.

The commission has historically accepted worst-case emissions quantifications for similar units at a site. This reduces the burden on permit holders for emission calculations. Compliance may continue to be demonstrated using worst-case scenario emission estimates. For example, if an OGS has 20 pumps at a site and all of the pumps require a similar maintenance activity, a permit holder could determine which pump emitted the highest volume of emissions during that activity and use that as a worst-case representation for the same activity performed on the other pumps at the site. This same representation can then be used for pumps at other sites the company controls if the emissions are representative.

A permit holder with 30 predicted annual activities could conservatively plan on 40 annual activities to account for circumstances that could cause an increase in planned MSS activities for these specific facilities. While site-specific emissions are preferred, permit holders could use a liquid and gas analysis from a representative site consistent with commission guidance. This will alleviate some of the calculation burden on permit holders, while ensuring compliance with the emission limitations in §106.4.

Additionally, the commission has created an emission calculation spreadsheet for use in estimating emissions from sites involved in the production of oil and gas. The purpose of this tool is to determine compliance with PBR or standard permit emission limits and to help quantify planned MSS emissions. The spreadsheet is available on the TCEQ Web site at: [www.TexasOilandGasHelp.org](http://www.TexasOilandGasHelp.org).

In certain circumstances, certification of emissions may be appropriate for sites previously claiming a construction authorization. The certification is not required but is recommended for OGSs whose cumulative site-wide emissions are within five tpy of any applicable general limit of an authorization mechanism. Facilities may limit the potential to emit (PTE) by calculating emissions based on a planned number of events. If a site's PTE is at or above the limitations of the authorization mechanism currently used for that site, the permit holder must either obtain a new authorization or lower the site's PTE, by certification, to avoid triggering a new authorization mechanism. There is no cost to certify emissions.

In order to clarify the intent of the commission's recommendation for certain sites to certify emissions, examples are provided below. Additional information can be found on the APD-CERT form (TCEQ-10489).

First, if a project includes control technology, limited hours, throughput, and materials or other operational limitations, in order to limit the PTE, the United States Environmental Pro-

tection Agency's (EPA) guidance is clear that these limitations must be federally enforceable. Certified emissions are federally enforceable. For example, if a site requires the use of a control device in order to meet the applicable general limit of an authorization mechanism, the commission recommends a permit holder certify the destruction and/or capture efficiency of the control device.

Second, a permit holder may want to voluntarily establish federally enforceable planned MSS emission limits for air pollutants to demonstrate the site is a minor source for purposes of the Title V federal operating permit program.

Third, if a project is in an Air Pollutant Watch List area and has increases or decreases in emissions of any of the area's pollutants of concern as a result of planned MSS activities, it is recommended the representations be federally enforceable through certification.

Fourth, if a project is located at a site subject to NO<sub>x</sub> Cap and Trade requirements in Chapter 101, the amount of NO<sub>x</sub> subject to that program must be federally enforceable. Any increase or decrease in NO<sub>x</sub> emissions from planned MSS activities would therefore be required to be federally enforceable.

#### *What other rules apply to sites claiming this proposed PBR?*

It is intended that this proposed PBR will be used in addition to a construction authorization at an OGS. In addition to the requirements in Chapter 106 to claim the proposed PBR, all facilities and sources in Texas must comply with the applicable requirements in 30 TAC Chapter 101, General Air Quality Rules. The most common parts of Chapter 101 affecting OGSs are §101.4, Nuisance; §101.10, Emissions Inventory Requirements; and §101.201, Emissions Event Reporting and Recordkeeping Requirements. Potential nuisance conditions from activities in the oil and gas industry include odors, smoke, and dust from in-plant roads, work areas, and traffic.

All sites in Texas must comply with opacity limitations in 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particular Matter. All OGSs, especially sour sites, must ensure compliance with the ambient air quality standards in 30 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds. OGSs in certain areas must comply with various standards in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds; and 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds.

Federal rules may also apply. Federal standards applicable to OGSs can be found in 40 Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and 40 CFR Parts 61 and 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP). Certain activities required under federal rules may be considered planned MSS activities and authorized under this proposed PBR. For additional information about rules that may apply to OGSs, visit [www.TexasOilandGasHelp.org](http://www.TexasOilandGasHelp.org).

#### *Protectiveness Review*

##### *Modeling and Monitoring*

After the commission assessed typical planned MSS activities conducted at OGSs, the emissions associated with these activities were evaluated for inclusion in the proposed PBR. The protectiveness review focused on blowdowns and tank or vessel degassing because they were identified as the sources of the highest emissions related to planned MSS activities.

THSC, §382.051961 requires that the commission review credible air quality monitoring and modeling data in order to determine that emissions limits or other emissions-related requirements of the proposed PBR are necessary to protect public health and the environment. In developing the protectiveness review, the commission incorporated both modeling and monitoring information from three sites in the Air Quality Analysis (AQA), conducted a case study of Automatic Gas Chromatographs (AutoGCs) monitoring data from emission events, reviewed monitoring data near a tank farm, reviewed complaint investigation reports with associated summa canister air samples, and reviewed the state-wide benzene emissions data evaluated by the TCEQ's Toxicology Division.

In the air permit process, the commission uses short-term and long-term effects screening levels (ESLs) to evaluate modeling of proposed emissions for their potential to adversely affect human health and the environment. For evaluation of air monitoring results, air monitoring comparison values (AMCVs) are used to assess the potential for exposure to the measured concentrations to adversely affect human health and the environment. When developing individual permit requirements, modeled potential emissions are compared to the applicable ESLs so that when multiple sources are in an area, monitored emissions will be below the applicable AMCVs. The long-term ESL and long-term AMCV for benzene are both 1.4 parts per billion (ppb) or 4.5 micrograms/cubic meter (µg/m<sup>3</sup>). The short-term ESL for benzene is 54 ppb (170 µg/m<sup>3</sup>) and the short-term AMCV is 180 ppb (580 µg/m<sup>3</sup>).

The AQA was performed using AERMOD (version 12060). AERMOD is based on the Gaussian distribution equation and is inherently conservative due to the main simplifying assumptions made in its derivation: conditions are steady-state (for each hour, the emissions, wind speed, and wind direction are constant) and the dispersion from source to receptor is effectively instantaneous; there is no plume history as model calculations in each hour are independent of those in other hours; mass is conserved (no removal due to interaction with terrain, deposition, or chemical transformation) and is reflected at the surface; and plume spread from the centerline follows a normal Gaussian distribution and only vertical and crosswind dispersion occurs-dispersion downwind is ignored.

To determine which contaminants would be modeled for the AQA, the commission first determined which speciated VOC would be the contaminant of concern. In the recent rule package for PBR, §106.352, effective February 27, 2011, numerous speciated VOCs (benzene, toluene, ethylbenzene, xylenes, propane, butane, and others) were evaluated using representations from projects and hypothetical cases based on concentration percentage and associated ESL. In almost every instance, the compound benzene was identified as the contaminant of concern before any other VOC compound. The annual (long-term) ESL for benzene is substantially lower than any of the corresponding ESLs for other air contaminants expected to be emitted at an OGS. Therefore, the commission determined that conducting a protectiveness review of benzene is appropriate for demonstrating that planned MSS activities at OGSs do not adversely affect human health and the environment. To analyze the annual acceptable emissions of benzene, both the hourly and annual impacts were evaluated for protectiveness.

Assuming 1% of VOC emissions are benzene provides a conservatively high benzene emission rate. This assumption is used when direct measurement or sampling is unavailable. This per-



centage was used as the basis for emission estimates of benzene from VOC.

The AQA included an evaluation of information from TCEQ's Barnett Shale Formation Tank Battery Monitoring Project from July 2010 to develop modeling for two of the sites presented in the project.

The first site is the Chesapeake Energy Little Hoss Lease, located in Johnson County, approximately 1.75 miles west of State Highway 171. Monitoring at this location was conducted from Noon on July 12 to Noon on July 13, 2010.

The second site is the ConocoPhillips Company Gage Pitts Lease, located in Wise County, approximately one half mile south of US Highway 380. Monitoring at this location was conducted from 12:15 p.m. on July 14 to 12:15 p.m. on July 15, 2010.

The commission used the monitoring project to develop a representative modeling scenario for evaluating planned MSS tank degassing activities. In order to develop the representative modeling scenario, the commission placed off-property receptors at the same location as the monitors in the study. A tank thief hatch adapter sampling apparatus was installed at the two sites for the monitoring project and was the source of emissions evaluated in the representative modeling analysis. The commission used photographs included in the monitoring report and aerial photography to locate the sources. The commission modeled the tank thief hatch adapter as a point source with pseudo point parameters using emission rates from contractor information. The modeling used meteorological data from the same period as the monitor study. The Little Hoss evaluation used surface data from Granbury Regional Airport (station #53977). The Gage Pitts evaluation used surface data from Decatur Municipal Airport (station #53694). Both evaluations used upper air data from Fort Worth (station #3990). These meteorological stations are the closest Automated Surface Observing Systems (ASOS) stations to each location.

Using the representative parameters, the commission conducted modeling and compared the model results to the monitored values to evaluate model performance. The predicted concentrations were added to the concentration from up-wind monitors, and the total concentrations were generally within 20% of the monitored value with the exception of one receptor at the Little Hoss Lease. The predicted concentration at this receptor was approximately two times greater than the monitored value. Because the model results were within the generally accepted limit of model performance (within a factor of two), the commission used the model setup to evaluate benzene emissions from typical tank degassing activities. Although there may be several tanks at a site, tank degassing typically will not occur simultaneously at more than one tank at a site at a time.

The commission evaluated four degassing activity scenarios at the Little Hoss and Gage Pitts locations: unassisted degassing from a fixed roof tank less than or equal to 500 bbl, forced ventilation degassing from a fixed roof tank less than or equal to 500 bbl, forced ventilation degassing from a 1,000 bbl fixed roof tank, and forced ventilation degassing from a 100,000 bbl floating roof tank. The modeling used a point source with pseudo point parameters to evaluate the unassisted tank degassing activity, a point source with representative parameters for the forced ventilation degassing of 500 bbl and 1,000 bbl tanks, and a volume source for the degassing of a 100,000 bbl floating roof tank. Receptors were placed at 50-foot intervals beginning at the prop-

erty line and extending a quarter mile from the property line. The modeling used the same meteorological stations as the representative modeling scenario, but was conducted for an entire year, specifically 2010. The predicted benzene concentrations for the unassisted tank degassing scenario were all less than the ESL for benzene. The maximum predicted hourly concentrations for the forced ventilation tank degassing scenario from fixed roof tanks approximately 14 times the short-term ESL for benzene.

The commission modeled the 100,000 bbl floating roof tank release height at 40 feet (top of the tank) based on industry representations of BMPs and research conducted by staff on tank degassing activities. The maximum predicted hourly concentrations for the floating roof tank degassing scenario was approximately 21 times the short-term ESL for benzene. However, the frequency of ESL exceedance is only one hour per every ten years for each tank degassing activity. The predicted annual impacts are below benzene's ESL. The TCEQ Toxicology Division reviewed the modeling results and has determined that tank degassing that complies with the conditions in the proposed PBR are expected to be protective of human health and the environment.

The AQA also evaluated planned MSS activities at the Ponder Compressor Station, located in Ponder, Denton County. The Ponder Compressor Station is located approximately 1,100 feet south-southeast of the AutoGC Monitor at the Dish Airfield (CAMS 1013). The commission reviewed a recent standard permit application for the site and used parameters represented in the application to evaluate benzene emissions from blowdown activities. Staff used 12 months of actual blowdown records, which indicated that a typical blowdown at this site lasted less than five minutes and resulted in an average of 12.64 lb/hr of VOC emissions. There were 35 blowdowns in the 12 months of data evaluated. The blowdown activity was modeled as a point source with the parameters represented in the application. Blowdown activities may occur up to 60 times per year, with typically one blowdown in an hour for a duration of five minutes. The Ponder evaluation used 2011 meteorological surface data from Denton Municipal Airport (station #3991) and upper air data from Fort Worth (station #3990). The surface station is the closest ASOS station, at approximately eight miles to the north. The commission located receptors at 50-foot intervals beginning at the property line and extending a quarter mile from the property line, as well as an additional receptor at the location of the Dish Airfield Monitor. The maximum hourly monitored value for 2011 is 8  $\mu\text{g}/\text{m}^3$ . The maximum predicted concentration from the modeling at the location of the monitor receptor is 9.25  $\mu\text{g}/\text{m}^3$ . The maximum predicted concentration at any receptor is 160  $\mu\text{g}/\text{m}^3$ , which is less than the short-term ESL for benzene.

#### *Case Studies: Emission Events and Various Monitoring*

A case study to examine the effect of emissions events on nearby monitors was conducted. While this proposed PBR will not authorize emissions events, the reporting requirements for these events provided staff with an estimated amount of emissions and a defined time of release. Staff reviewed these emissions events to evaluate the impact on monitors from benzene emissions as a proxy for evaluating planned MSS emissions.

The monitors used in this research were AutoGC because they provide the most usable, consistent data with regard to the activities being evaluated for the proposed PBR. Because the activities being evaluated for the PBR are typically less than 24 hours

in duration, AutoGCs are the ideal monitoring equipment type. AutoGCs are designed to collect data at a given sampling location over time and provide hourly measurements, seven days a week.

Once the appropriate AutoGC monitors were selected, the commission identified sites reporting estimated benzene emissions resulting from emission events. In order to determine the benzene effects associated with planned MSS activities staff compared the associated benzene emission events at these sites to the collected, verified AutoGC monitoring data.

An emissions event at a site located approximately 2,000 feet northwest of the Oak Park Monitor in Corpus Christi, Texas was evaluated. This site reported a release of approximately 94 pounds of benzene over a 13.5-hour period. Wind direction during this event was consistently coming from the northwest, which would carry emissions from the site towards the monitor. The highest detected benzene concentration at the monitor during the event was 0.78 ppb.

An emissions event at a second site located approximately 4,000 feet northeast of the Solar Estates Monitor in Corpus Christi, Texas was also evaluated. This site reported a release of 15 pounds of benzene over a 1.5 hour period. During this time period, wind direction was consistently coming from the northeast, which would carry emissions from the facility towards the monitor. The highest detected benzene concentration at the monitor during the event was 0.19 ppb. This site reported a second release of 3.9 pounds of benzene over a 40-minute period. During this time period, wind direction was consistently coming from the northeast. The highest detected benzene concentration at the monitor during the event was 0.46 ppb. This site reported a third release of 7,900 pounds of benzene over a three-hour period during the event. During this time period, wind direction fluctuated but was coming from the northeast towards the monitor when the AutoGC took the air sample. The detected benzene concentration at the monitor during that measurement was 1.80 ppb. All of the monitored values during the case study emission events were below the short-term AMCV for benzene.

The emissions event estimate (7,900 lb of benzene/three hours) represents a much greater amount than is expected for any planned MSS activities at OGSs. The highest planned MSS activity at OGSs was approximately 38 lbs of benzene in one hour, which is 1% of the total 3,850 lb/hr of VOC estimated from using forced ventilation to degas a 100,000 bbl floating roof tank. Therefore, the emissions from planned MSS are less than 1% of the emissions from the event in the case study and would be expected to be monitored below the short-term AMCV.

In addition to the monitoring data associated with emissions events, staff reviewed data from a monitor located between two large tank batteries. Staff evaluated 12 months of validated data from the Huisache monitor in the Corpus Christi area. The two tank batteries are part of two large refineries that conduct tank degassing activities at a higher frequency than expected at an OGS. Based on permit representations, degassing activities occur at these facilities because of regulatory requirements and because of frequent changes of service. Although degassing of tanks storing high vapor pressure compounds is controlled, and despite not having any site-specific data for an OGS near one of these monitors, it is likely that multiple degassing events of large tanks took place in the 12 months for which data was evaluated. The monitoring data did not show any exceedances of the short-term AMCV for benzene for the 12 months evaluated.

Additionally, staff reviewed 58 complaint response investigations from the TCEQ Dallas-Fort Worth regional office. Of the 58 investigations, 49 included the collection of Summa canister samples that were subsequently analyzed. Summa canisters are air monitoring tools the commission uses to collect air samples and analyze them for the possible presence of various air contaminants. The time of sample collection can range from a few seconds to 30 minutes. The samples from the investigations were analyzed for elevated concentrations of 84 petroleum-related compounds (propane, isobutene, n-butane, or benzene). The analysis of the Summa canister samples did not show any elevated concentrations of petroleum-related compounds associated with planned MSS activities.

#### *State-wide Benzene Emission Summary*

The toxicology analysis of monitored benzene emissions state wide shows an overall trend of improvement. In 2011, benzene emissions at all monitors were below the long-term AMCV of 1.4 ppb. The intent of this PBR is to ensure that equipment and facilities at OGSs are operating in good working order and that unauthorized emissions caused by equipment failure are minimized, so that monitored benzene emissions continue to show improvement. Additional details on particular areas can be found on the TCEQ Web site [www.tceq.texas.gov/toxicology/regmemo/AirMain.html](http://www.tceq.texas.gov/toxicology/regmemo/AirMain.html).

#### *Section Discussion*

##### *Section 106.359, Planned Maintenance, Startup, and Shutdown (MSS) at Oil and Gas Handling and Production Facilities*

The commission proposes new §106.359 to authorize emissions from planned MSS activities at various oil and gas handling and production facilities. This proposed PBR is intended to cover all known planned MSS activities at OGSs. However, permit holders must comply with the general requirements to claim a PBR, in Chapter 106, which include recordkeeping and meeting site-wide emissions limits.

Proposed §106.359(a) establishes the applicability of this PBR to certain OGSs. Proposed subsection (a) will require permit holders to follow all conditions in the PBR to authorize planned MSS emissions at a site. If the permit holder does not comply with all conditions in the PBR (such as development and implementation of the maintenance program and adequate recordkeeping to demonstrate compliance), emissions from planned MSS activities will not be authorized.

The THSC, §382.051962 definition of planned MSS activities used in this proposed PBR differs from the §101.1 (Definitions) of scheduled MSS activity. In §101.1, scheduled MSS is defined as unauthorized emissions. Once a permit holder authorizes planned MSS activities, the requirements in §101.211 (Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements) do not apply. Planned MSS activities are routine and predictable, but not necessarily scheduled for a specific date in the future.

OGSs operating under several available construction authorizations may be eligible to claim the proposed PBR to authorize planned MSS emissions. This proposed PBR may be used with historical standard exemptions for oil and gas facilities. This proposed PBR may also be used with current PBRs: §106.351, Salt Water Disposal (Petroleum); §106.353, Temporary Oil and Gas Facilities; §106.354, Iron Sponge Gas Treating Unit; §106.492, Flares; §106.511, Portable and Emergency Engines and Turbines; and §106.512.

OGSs that claim §106.352(l) may be eligible to claim the proposed PBR. However, OGSs that are required to register under §106.352(a) - (k), effective November 22, 2012, or the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, effective November 8, 2012, have planned MSS addressed in those authorizations and are not eligible to use the proposed PBR. Sites that are located outside of the counties listed in §106.352(a)(1) that have voluntarily registered under the §106.352(a) - (k), or the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, may opt to claim §106.352(l), or the standard permit in §116.620, if eligible, and claim this PBR to authorize planned MSS emissions.

The PBR §106.355, Pipeline Metering, Purging, and Maintenance, authorizes sections of pipelines between sites. These sources should continue to use that authorization and are not eligible to claim this proposed PBR.

Tanks that are authorized under §106.478, Storage Tank and Change of Service, or other PBRs in Chapter 106, Subchapter U (Tanks, Storage and Loading) have historically been eligible to authorize planned MSS activities under §106.263. This will not change as a result of this proposed PBR. The applicability of these PBRs is broader than OGSs. Sites authorized under PBRs in subchapter U will not be eligible to authorize planned MSS activities under the proposed PBR. The intent of the proposed PBR is to limit the applicability to certain oil and gas handling and production facilities or sites including but not limited to tank batteries between sites that handle liquids from oil and gas production, and not necessarily tank farms holding final product. However sites authorized under PBRs under subchapter U that can meet the requirements of §106.352(l) may opt to re-register their site under §106.352(l) and claim this proposed PBR for planned MSS authorizations.

The proposed PBR will be available for OGSs authorized under the standard permit in §116.620, effective September 4, 2000.

If certain planned MSS activities were claimed as part of a previous authorization under historical standard exemptions, PBRs, or standard permits, permit holders may switch to this proposed PBR. However, proposed subsection (a)(2) prohibits the removal of emission control methods and emission increases from existing planned MSS activities authorized under this proposed PBR. This proposed PBR specifically addresses all planned MSS activities at OGSs, and ensures they are protective. The requirement to develop a maintenance program and keep records provides flexibility while not overburdening permit holders and the commission with unnecessary paperwork.

Facilities or sites authorized under case-by-case permits will be able to authorize certain planned MSS emissions under this proposed PBR. The proposed PBR will not authorize planned MSS emissions which exceed the limits represented and established in the case-by-case permit, or specific planned MSS activities already authorized under the case-by-case permit. However, planned MSS activities that are not included in the case-by-case permit may be authorized under the proposed PBR. The normal permitting process requires that activities at a site that are authorized under PBR be addressed at the next permitting action. The intent of limiting the proposed PBR's use with OGSs that have case-by-case permits is to ensure protectiveness and prevent stacking (the authorization of additional emissions above those addressed in the case-by-case permit review). However, activities not previously identified in the permit application may be authorized under the proposed PBR and addressed at the next permit action. For example, if an OGS represented ten blowdown

activities and the associated emissions from those blowdowns were evaluated for protectiveness, then it would not be appropriate to use the proposed PBR to authorize additional blowdown activities that were not accounted for in the case-by-case permit impacts review.

Additionally, if a planned MSS activity is authorized in a case-by-case permit, companies may not alter the permit to delete the activities and claim them under this proposed PBR while continuing to authorize the facilities or a portion of them in the case-by-case permit. This is consistent with the memorandum on "Voiding Permits and Claiming Permits by Rule or Standard Permits" dated December 9, 2005. The memorandum is available on the TCEQ Web site at [http://www.tceq.texas.gov/permitting/air/memos/pbr\\_memos.html](http://www.tceq.texas.gov/permitting/air/memos/pbr_memos.html).

This proposed PBR will not authorize emissions associated with emissions events, malfunctions, upsets, unplanned startup, unplanned shutdown, or unplanned maintenance activities that require immediate corrective action. An upset event is the unplanned and unavoidable breakdown of a process that releases unauthorized emissions of air contaminants. For additional information, see §101.10, Definitions and §101.201, Emissions Event Reporting and Recordkeeping Requirements. However, if a permit holder conducts planned maintenance on an accelerated timeframe while a facility is shutdown because of an emissions event, the planned maintenance as documented in the permit holder's maintenance plan and the subsequent startup of the facility may be claimed as planned maintenance and planned startup covered by this authorization.

Alternate operating scenarios are not considered planned MSS activities and emissions associated with them are not authorized under this proposed PBR. The maintenance activity performed on a piece of control equipment, can be considered a planned MSS activity; however the emissions released from the normally controlled facilities during this downtime are considered an alternate operating scenario and not a planned MSS activity. For example, for 50 weeks out of the year, a vapor recovery unit controls a series of tanks. For the other two weeks the vapor recovery unit undergoes maintenance and the tanks are not controlled, but vented to the atmosphere. This is considered two operating scenarios: the normal operating scenario (tanks controlled) and the alternate operating scenario (tanks not controlled). Both scenarios should be reflected as production emissions from tanks and are not considered planned MSS activities.

It is not the commission's intent to aggregate emissions from different sites. THSC, §382.051964 and 30 TAC Chapter 122 (Federal Operating Permits Program) place specific limitations on the aggregation of oil and gas facilities and sites, respectively.

Proposed subsection (b) establishes the types of planned MSS activities and facilities that are intended to be eligible for authorization under the proposed PBR. The list of activities included in the proposed PBR was developed through research conducted by the commission and from stakeholder input.

The intent of this subsection is to provide a clear and simple list of the types of activities and facilities that may be authorized under the proposed PBR. This subsection is comprised of three groups of planned MSS activities. Subsection (b)(1) - (5) lists the planned MSS activities that are considered lower emitting activities. Proposed subsection (b)(6) includes activities with the same character and quantity of emissions as those listed under proposed subsection (b)(1) - (5) to allow flexibility for planned MSS activities that are protective because of their negligible

emissions. Proposed subsection (b)(7) - (9) addresses planned MSS activities that have a greater potential for emissions - the higher emitting activities. Subsection (b)(10) addresses abrasive blasting and coating for maintenance.

The list of planned MSS activities in subsection (b)(1) - (5) covers a range of lower emitting activities. For example, subsection (b)(1) lists planned engine maintenance as an activity eligible for authorization under the proposed PBR. Planned engine maintenance can include filter changes, oxygen sensor replacements, compression checks, overhauls, lubricant changes, spark plug changes, rod packing, emission control system maintenance, and facilities used for testing and repair of engines and turbines. These activities are considered BMPs to keep an engine operating properly and in good working order. Similar BMP activities for boilers, heater and heat exchangers, and turbine hot section swaps will also be eligible for authorization under the proposed PBR.

Proposed subsection (b)(2) authorizes the planned repair, adjustment, calibration, lubrication, and cleaning of process equipment at an OGS. This paragraph is intended to authorize these maintenance activities for the numerous facilities found at an OGS. Repairing, adjusting, calibrating, lubricating, and cleaning of facilities are common BMPs to keep equipment in good working order.

Proposed subsection (b)(3) - (4) authorizes planned replacement of certain facilities at OGSs. Examples of replacements included as planned MSS include: piping components, pneumatic controllers, wet and dry seals on turbines, meters, instruments, analyzers, screens, filters, boiler refractories, and turbine or engine hot section swaps.

Planned turbine and engine hot section swaps are authorized under the proposed PBR as maintenance consistent with current commission guidance. To ensure proper maintenance, good operation, and to limit petroleum production interruptions, portions of turbine and engine sets used by the oil and gas industry are commonly replaced with components that have been rebuilt off-site. In these cases, no changes are made to the supporting equipment (anchors, piping connections, fuel system, lubrication system, control system, structure, skids, and inlet and exhaust ducts) which allows the combustion device to operate. The replacement combustion, compressor units, or power turbines are typically of the same horsepower, operate in the same manner, and have equal or less emissions than the original devices (in-kind). The new components operate in the same manner, provide no increase in throughput, and have equal or less emissions with no different characteristics than the original devices. Under THSC, §382.003(9) and 30 TAC §116.10(11) (General Definitions) exchanges of in-kind components that do not increase the amount or change the character of emissions are not considered a "modification". Planned replacement of engine and turbine components should be considered a maintenance activity. The replacement of existing permitted engines and turbines with in-kind facilities results in no environmental changes. To maintain good operation, the existing facilities need to undergo maintenance or rebuilding and if not replaced, would likely emit higher amounts of air contaminants to the atmosphere over time. This is consistent with the memorandum on "Replacement of All Engine and Turbine Components for Oil and Gas Production - Revised" dated September 1, 2005. The memorandum is available on the TCEQ Web site at <http://www.tceq.texas.gov/as-sets/public/permitting/air/memos/replacement.pdf>.

Replacement of other equipment not listed in the proposed PBR would require evaluation of the need for a construction authorization. For example, replacement of a glycol dehydrator originally authorized by a standard permit will require a revision to the standard permit. The intent is to authorize the BMPs that are integral to proper operation of equipment and to ensure that unauthorized emissions events caused by equipment failure are minimized. The maintenance program should address the predicted frequency of these types of planned MSS activities, and logs should be kept of these activities to demonstrate compliance with this proposed PBR.

Proposed subsection (b)(5) addresses piping that is used during planned MSS activities. The construction and use of piping that is necessary to bypass a facility, or piping section that is undergoing maintenance is authorized under the proposed PBR. This bypass piping may allow materials to be directed around a process unit or control device for the period of time when maintenance is occurring. The commission does not consider the piping to be an alternate operating scenario, but rather a BMP to minimize emissions during planned MSS activities. The records in the maintenance program should demonstrate when the bypass piping is used for planned MSS. However, a permanent bypass pipeline not being used for maintenance is not authorized under this PBR. This scenario is an alternate operating scenario and fugitive emissions associated with the use of this bypass pipeline should be authorized under the construction authorization.

The list of activities in the proposed PBR is not all inclusive. Under proposed subsection (b)(6), the commission intends to allow planned MSS activities that are the same in character and quantity of emissions as the types of activities listed in proposed subsection (b)(1) - (5) to be authorized by the proposed PBR. The character, quantity, dispersion, frequency, and duration of the lower emission activities will result in less emission impacts than higher emission activities, and ensures protectiveness. Planned MSS activities that are within the scope of the protectiveness review conducted for these activities may also be authorized using the proposed PBR, even if they are not specifically listed. This flexibility will allow for advances in industry planned MSS technology while still remaining protective. Unauthorized emissions resulting from upsets will not be authorized by this proposed PBR, even if the emissions are the same in character and quantity as those reviewed for protectiveness. The resetting of pressure relief devices to a closed position and sealing the vessels and piping are BMPs. However, emissions from activation of a pressure relief device may be an emissions event.

Proposed subsection (b)(7) includes the emissions from the pigging and purging of piping at a site if it is planned MSS activity or facility. Before piping can be taken out of service for operational or maintenance purposes, it must be "purged" or depressurized by venting the natural gas to the atmosphere. To effectively purge the pipeline, a device (pig) is inserted into the line and gas is used to force the pig through the line. In addition to purging the gas in the line, pigging for maintenance also scrapes off solid deposits and pushes liquids through a multi-phase pipeline. Operational pigging is considered startup or shutdown activities for the purposes of the proposed PBR. Startup or shutdown pigging can include pigging for separation of products as well as separation of product quantity.

The emissions generated by purging are a function of the pipe diameter, length, and pressure. To demonstrate compliance with proposed subsection (d), records should be kept detailing the date and time of each pigging occurrence with corresponding

pipeline diameter, length, and pressure. These records are important to determine the site-wide emissions totals to demonstrate compliance with the general requirements to claim this proposed PBR as well as the construction authorization for the production emissions at the site.

Proposed subsection (b)(8) addresses equipment blowdowns. Various types of equipment blowdowns were evaluated for this proposed PBR. Examples of blowdowns typically conducted at OGSs include compressor blowdowns, vessel blowdowns, and piping blowdowns. Liquids drained out of pipelines or vessels to prepare for blowdown activities should be drained off to a container and handled properly. The commission expects negligible emissions from the liquids.

Many planned MSS activities (such as blowdowns) are practically and physically indistinguishable from those that occur as a result of emissions events. Therefore, it will be important for the permit holder to record the reason for the planned MSS activity, demonstrating that it meets the requirements of this PBR, specifically proposed subsection (d). In some instances, adequate notice will be given to a permit holder that upstream or downstream actions may result in the need for planned MSS activities at the permit holder's OGS. If adequate notice is given for the affected permit holder to plan a response, minimize the frequency and duration of emissions, and the emissions do not exceed the limits in §106.4, then the activities may be claimed as planned MSS. Records of this notification must be kept to demonstrate that the emissions were associated with a planned MSS activity.

To demonstrate compliance with proposed subsection (d), records for blowdowns must be kept of the date, time, and equipment, and should demonstrate the permit holder is following the maintenance program as required in proposed subsection (c)(2). Also, because blowdowns may be a result of upsets or unplanned maintenance at the site, information reflecting the cause or reason for the blowdown must be part of the record.

Proposed subsection (b)(9) addresses authorization of emptying, purging, degassing, or refilling of tanks or vessels. Based on the research and the protectiveness review conducted by the commission, emptying and degassing of tanks and vessels typically located at OGSs are covered under this proposed PBR if the conditions and BMPs listed in the PBR are followed. Proposed subsection (b)(9)(C) requires that degassing by forced ventilation and the use of vacuum trucks is limited to a single tank or vessel at a time. This is necessary to ensure protectiveness of the proposed PBR. Under this proposed PBR, BMPs for a degassing event include completely emptying all the liquids from the tank before degassing begins. In accordance with the proposed subsection (b)(9)(A), liquids and solids that are removed from the tank or vessel are required to be directed to covered containment equipment and properly disposed of or recycled. BMPs should be used to remove air contaminants from tanks or vessels.

Floating roof tanks must be landed prior to beginning the degassing process. In accordance with proposed subsection (b)(9)(B) and (C), BMP for degassing large floating roof tanks (approximately 100,000 bbl) includes either routing the emissions to a control device or directing the emissions out the top of the tank. Allowing degassing at ground level without control can create explosive conditions and expose workers to emissions that exceed standards regulated by OSHA. Controlling or routing emissions out the top of the tank is consistent with documented industry practice regarding tank degassing and cleaning. In some cases industry may opt to control emissions

from the degassing or purging of tanks or vessels. For example, degassing emissions may be sent to a control device like a thermal oxidizer. Proposed subsection (b)(9)(D) authorizes temporary emissions capture equipment and control facilities associated with degassing tanks or vessels.

Planned operational landings of floating roof tanks or operational emptying of fixed roof tanks are authorized under this proposed PBR as shutdown activities. The refilling of these tanks is considered a startup activity. Air emissions from floating roof tanks are greater while the tank roof is landed and remain so until the tank is refilled and the roof is again floating. For operational landings, it is BMP that tanks should be filled and back in normal operation as safely and quickly as possible. However, the commission clarifies that "convenience landings" are not considered operational landings and are specifically excluded from authorization in subsection (b)(9)(E). The proposed PBR will not authorize emissions from convenience landings consistent with the memorandum on "Air Emissions During Tank Floating Roof Landings" dated December 5, 2006. The memorandum is available on the TCEQ Web site at: [http://www.tceq.state.tx.us/assets/public/permitting/air/memos/tank\\_landing\\_final.pdf](http://www.tceq.state.tx.us/assets/public/permitting/air/memos/tank_landing_final.pdf).

To demonstrate compliance with proposed subsection (d), records should be kept of the date, time, and the equipment used for degassing as well as the date and time of any operational landing or operational fixed roof tank emptying. For degassing, OGSs will have to keep records that demonstrate that all liquids have been removed from the vessel and the date a degassing event takes place. For operational landing or operational fixed roof tank emptying, OGSs will have to keep records that demonstrate the level to which the liquids were removed from the vessel and the time required to refill the tank to normal operating levels. Also, because degassing and purging of vessels may also be a result of upsets or unplanned maintenance at the site, or from upstream or downstream upsets or unplanned maintenance, records should reflect the planned cause or reason for the degassing or purging. Because degassing and blowdowns were identified as the source of the highest emissions related to planned MSS activities, permit holders may need to quantify emissions from these planned MSS activities to be able to demonstrate compliance with the general limits for claiming this proposed PBR and the OGS construction authorization claimed.

Proposed subsection (b)(10) authorizes the facilities used for abrasive blasting, surface preparation, and surface coating at OGSs. Historically, the commission has authorized these maintenance activities under §106.263, if the blasting, surface preparation, and coating supplies and equipment are taken to the object fixed in place and there is no practical means of moving the object to a designated area for surface preparation. If an object can be taken to a designated area, then other PBRs such as §106.433, Surface Coat Facility, and §106.452, Dry Abrasive Cleaning, would apply.

The preamble to §106.263 (October 26, 2001, issue of the *Texas Register* (26 TexReg 8523)) states that the emissions from blasting and coating fixed objects have a record of insignificant emissions. This same determination is applied in this proposed PBR to include the surface preparation and coating of equipment that is used at the site for oil and gas handling or production. This allows flexibility for oil and gas operators to perform necessary maintenance on equipment and supporting structures used at a location. Limiting surface preparation and coating to equipment used at the site is intended to prevent the site from being used

inappropriately as a surface coating facility, which would require construction authorization. For example, a permit holder cannot bring equipment to the site that is not part of the oil and gas handling and production activities at the site. Surface preparation and coating of non-process equipment should have separate authorization such as §106.433, §106.452, or a case-by-case permit. Records documenting surface preparation and coating activities must be kept to demonstrate compliance under proposed subsection (d), and as part of the maintenance program in accordance with proposed subsection (c)(2).

Proposed new §106.359(c) establishes the conditions to keep facilities in good working order, and develop and implement a maintenance program that is based on BMPs.

Proposed subsection (c)(1) specifically requires facilities that have the PTE air contaminants be maintained in good working order and operated properly. This includes keeping appropriate hatches closed when not being used; following the permit holder's maintenance program (which may include manufacturer's recommendations) for operation, maintenance, and corrosion prevention of equipment and structures; and keeping piping intact from normal wear and tear to prevent upset conditions. The lack of planned maintenance or failure to conduct planned maintenance that results in emissions may be deemed noncompliance with this PBR. For example, tanks or piping with holes resulting from the lack of corrosion prevention are not facilities in good working order.

Proposed subsection (c)(2) requires the permit holder develop and implement a maintenance program. The purpose of the maintenance program is to keep track of planned and performed maintenance, to maintain consistency of implementation among different personnel, and to demonstrate compliance with the proposed PBR. The commission anticipates that several parts of the maintenance program are already a part of the normal operation of many OGSs. Proposed subsection (c)(2)(A) - (E) lists the basic requirements for a maintenance program. Specifically, the maintenance program should address the cleaning and routine inspection of all equipment, repair of equipment on schedules to prevent failure and maintain performance, training for appropriate personnel, and records of conducted planned MSS activities.

Training of personnel may be accomplished in a number of ways. The training is not intended to create a requirement for certification or expensive formal training, but is intended to ensure that personnel who are responsible for implementing the maintenance program have the knowledge necessary to do so. The commission anticipates that on-the-job training will be conducted to familiarize personnel with the requirements of the maintenance program and the actions necessary to implement the program.

The maintenance program may be written or electronic, but must be made available to agency personnel upon request. Each individual piece of equipment must have a corresponding record. Records kept demonstrating compliance with other applicable rules (such as federal rules or the general requirements to claim a PBR) may fulfill some of the requirements for the maintenance program. The maintenance program should demonstrate planned MSS activities for each piece of equipment, and include the corresponding records of planned MSS that was conducted. This is necessary to demonstrate that the plan has been implemented and is being followed at the OGS.

Proposed subsection (d) references the general PBR recordkeeping requirements in §106.8 for compliance. These

recordkeeping requirements are intended to provide a clear, understandable set of expectations in order to easily demonstrate compliance. Providing explicit requirements aids practical enforceability, which is an essential element for all commission authorizations. All necessary records must be maintained and contain sufficient information to demonstrate compliance. These records are important to: verify all information used to estimate emissions; verify that planned MSS emissions meet all applicable limits; demonstrate current equipment and processes; explain equipment or process changes and associated effects on emissions; and demonstrate that equipment is properly operated, monitored, maintained, and inspected. Any records that are kept for other purposes but demonstrate the necessary information are sufficient to demonstrate compliance with this proposed PBR.

Records may be written or electronic and should be kept as part of the maintenance program. Examples of records that may demonstrate compliance include: personnel training logs, information used to estimate emissions, inspection logs, maintenance activity logs or receipts, or copies of the maintenance program. Examples of records for specific activities include: the date and time of each pigging occurrence with corresponding pipeline contents, diameter, length, and pressure; records for blowdowns kept by the date, time, planned cause or reason, and the equipment; degassing activity date, time, planned cause or reason, and the equipment used; and blasting and coating of equipment used at the site in oil and gas handling and production. Correspondence and documentation (i.e., notice) of planned MSS activities that occur as a result of third party actions must be maintained and made available.

Claiming the PBR and maintaining the required recordkeeping will fulfill the requirement to "file an application" to authorize planned MSS emissions as required in THSC, §382.051962. Records must be readily available to the commission or local air pollution control program with jurisdiction upon request.

**Fiscal Note:** Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The proposed rule will apply to certain oil and gas facilities and are not expected to have any significant fiscal implications for other units of state or local government.

The proposed rule will amend Chapter 106 and apply to oil and gas operations in all counties in the state, with the exception of facilities authorized under §106.352(a) - (k) and specific planned MSS activities or facilities that have already been authorized under a §116.111 (General Application) permit. The proposed rule will be protective of the environment and establish an enforceable authorization methodology for planned MSS emissions at affected oil and gas facilities that comply with the emission limits for PBRs found in Chapter 106. Owners and operators of affected oil and gas facilities have until January 5, 2014, to authorize planned MSS emissions. After that date, owners and operators of OGSs with unauthorized MSS emissions will lose the ability to claim an affirmative defense.

Specifically, the proposed rule will: establish a new, voluntary PBR to authorize planned MSS emissions at affected OGSs; require the use of a maintenance program at these sites based on BMPs to minimize emissions from planned MSS activities; and

require owners and operators to keep records to demonstrate compliance with required maintenance.

The proposed rule is not expected to have significant fiscal impacts for other units of state or local government. Oil and gas facilities are not typically owned or operated by these types of governmental entities. If there are governmental entities that own or operate affected oil and gas facilities and sites, they would be required to establish a maintenance program and keep records to demonstrate compliance, but cost implications are expected to be minimal.

The proposed rule will streamline the authorization process of planned MSS emissions at applicable OGSs and are not expected to significantly increase revenue or agency costs. The proposed authorization process will cost less than requiring oil and gas companies at affected sites to apply for case-by-case permit amendments or standard permits to authorize planned MSS emissions.

#### Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be continued protection of the environment and public health and safety by establishing enforceable authorizations to minimize planned MSS emissions at certain oil and gas facilities and sites. Owners and operators of these facilities and sites will be required to develop a maintenance program and keep records to demonstrate compliance with that maintenance program.

The proposed rule will not have a significant fiscal impact on individuals or businesses. Comptroller records indicate that there may be as many as 2,784 companies that own or operate OGSs in Texas. Staff estimates that there are over 500,000 OGSs that may be able to claim the proposed PBR to authorize planned MSS emissions. The proposed rule makes registering for a PBR to authorize planned MSS emissions from oil and gas facilities voluntary, and individuals or companies are choosing to pay the PBR fee of \$100 for a small company or \$450 for a large company when they voluntarily register. It is not known how many businesses will choose to pay for the PBR, but the number is expected to be low. The proposed, enforceable authorization method will be less costly than obtaining a case-by-case permit or a standard permit to authorize planned MSS emissions and will continue to allow oil and gas facilities to qualify for an affirmative defense after January 5, 2014.

The proposed rule does require individuals or businesses owning or operating oil and gas facilities to keep records of maintenance performed on equipment to demonstrate compliance, but the cost of recordkeeping is expected to be minimal. Records can be kept manually or electronically. The BMPs required by the proposed rule are not expected to increase maintenance costs since they are flexible and consistent with the regular maintenance a prudent equipment owner would perform to minimize those costs and maintain equipment in good working order.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate oil and gas facilities in Texas. Staff estimates that there may be as many as 135,000 OGSs that are owned or operated by small businesses. Small businesses are choosing to pay the \$100 fee to obtain the PBR by voluntarily registering. Small businesses will be required to develop a maintenance program based on BMPs and keep records to demon-

strate compliance, but costs associated with these requirements are expected to be minimal.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to protect the environment and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." While the purpose of this rulemaking is to authorize emissions from planned MSS activities at oil and gas handling and production facilities, it is not expected that this rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, while the proposed rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis will not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law." Specifically, the proposed rule does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is not designed to exceed any relevant standard set by federal law; 2) the rulemaking does not exceed an express requirement of state law; 3) no contract or delegation agreement covers the topic that is the subject of this proposed rulemaking; and 4) the proposed rulemaking is authorized by specific sections of THSC, Chapter 382, also known as the Texas Clean Air Act, and the Texas Water Code, which are cited in the Statutory Authority section of this preamble.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based

upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Additionally, THSC, §382.051962 applies to this rulemaking. THSC, §382.051962 states that the commission may adopt one or more PBR or one or more standard permits and may amend one or more existing PBR or standard permits to authorize planned MSS activities for facilities described by THSC, §382.051961(a). THSC, §382.051962 also states that the commission may not amend an existing PBR or an existing standard permit relating to an oil and gas facility unless the commission: 1) conducts a regulatory analysis as provided by Texas Government Code, §2001.0225; 2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of the Texas Clean Air Act is not contravened, including the protection of the public's health and physical property; 3) establishes any required emissions limits or other emissions-related requirements based on (A) the evaluation of credible air quality monitoring data; and (B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and 4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

The commission has conducted a regulatory analysis in accordance with Texas Government Code, §2001.0225 as previously described. Additionally, the intent of the rule is to authorize emissions from planned MSS activities at oil and gas handling and production facilities. The executive director examined monitoring and modeling data associated with planned MSS activities at oil and gas handling and production facilities and sites as discussed in Background and Summary of the Factual Basis for the Proposed Rule. Therefore, the rule is proposed in accordance with THSC, §382.051962.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Ar-

ticle I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to authorize emissions from planned MSS activities at oil and gas handling and production facilities. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, this proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking action is to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l), Goals). The proposed rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program



The new PBR in this proposal is a potentially applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Upon the effective date of this rulemaking, permit holders subject to the Federal Operating Permit Program that choose to claim this PBR to authorize planned MSS activities at their sites will be subject to the requirements of this section. Currently, an OGS may be authorized by PBR, standard permit, permits, or a combination of these authorizations. This proposed PBR is being developed to provide an updated, comprehensive and protective authorization for common planned MSS at OGSs in Texas. New and existing OGSs may be subject to the Title V federal operating permit program and if so, must obtain a site operating permit (SOP) or a general operating permit (GOP) that codifies all applicable requirements. Based on recent regulatory changes required by EPA and 40 CFR Part 70, a GOP can only be used by sites authorized under PBR or standard permit. If a major site subject to Title V does not qualify for a PBR or standard permit, it must obtain an SOP.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on April 4, 2013, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

The commission is also specifically requesting comments on any other processes that should be considered planned MSS activities with the same character and quantity of emissions as the lower emitting activities listed in this proposed rule. Although the commission cannot materially alter the scope of the proposed rule, the proposed language is intended to account for different processes or maintenance activities with equivalent character and quantity of emissions that may be identified during the comment period. Additional planned MSS activities identified during the stakeholder process that are within the category of the lower emission activities may be added to the rule if appropriate.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-030-106-AI. The comment period closes April 15, 2013. Copies of the proposed rulemaking can be obtained from the TCEQ Web site at [http://www.tceq.texas.gov/nav/rules/proposal\\_adapt.html](http://www.tceq.texas.gov/nav/rules/proposal_adapt.html). For further information, please contact Tasha Burns, Air Permits Division, Technical Support Section, at (512) 239-5868.

#### Statutory Authority

The new rule is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General

Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The PBR is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; §382.051961, which establishes specific requirements and analyses that must be conducted before the commission may adopt a new, or amend an existing permit by rule or standard permit for oil and gas facilities; §382.051962, which extended the deadline for owners or operators of oil and gas facilities to submit an application to authorize maintenance, startup, and shutdown emissions to January 5, 2014; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed new rule implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, 382.051961, 382.051962, and 382.057.

#### §106.359. Planned Maintenance, Startup, and Shutdown (MSS) at Oil and Gas Handling and Production Facilities.

(a) Applicability. This section applies to certain authorized oil and gas handling or production facilities or sites, and authorizes emissions from planned maintenance, startup, and shutdown (MSS) facilities and activities if all of the applicable requirements of this section are met.

(1) This section does not apply to oil and gas handling or production facilities or sites authorized under §106.352(a) - (k) of this title (relating to Oil and Gas Handling and Production Facilities), the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, §106.355 of this title (relating to Pipeline Metering, Purging, and Maintenance), or Subchapter U of this chapter (relating to Tanks, Storage, and Loading.)

(2) This section may not be used to supersede an existing authorization under Chapter 106 of this title (relating to Permits by Rule) or §116.620 of this title (relating to Installation and/or Modification of Oil and Gas Facilities) for planned MSS unless the previously represented emission control methods, techniques, and devices continue to be used and there is no resulting increase in emissions.

(3) All emissions covered by this section are limited to, collectively and cumulatively, emissions that are less than or equal to any applicable emission limit under §106.4(a)(1) - (3) of this title (relating to Requirements for Permitting by Rule) in any rolling 12-month period.

(b) Activities. Planned MSS activities and facilities authorized by this section include the following:

(1) engine and turbine maintenance;

(2) repair, adjustment, calibration, lubrication, and cleaning of oil and gas site process equipment;

(3) replacement of piping components, pneumatic controllers, boiler refractories, wet and dry seals, meters, instruments, analyzers, screens, and filters;

(4) turbine or engine hot section swaps;

(5) piping used to bypass a facility during maintenance;

(6) planned MSS activities with the same character and quantity of emissions as those listed in paragraphs (1) - (5) of this subsection;

(7) pigging and purging of piping;

(8) blowdowns;

(9) emptying, purging, degassing, or refilling of tanks and vessels (except as excluded in subparagraph (E) of this paragraph), and any associated temporary emission capture and control facilities if the following requirements are met:

(A) all contents from process equipment or storage vessels must be removed to the maximum extent practicable prior to opening equipment to commence degassing and maintenance. Liquid and solid removal must be directed to covered containment, recycled or disposed of properly. If it is necessary to drain liquid into an open pan or sump, the liquid must be covered or transferred to a covered vessel within one hour of being drained;

(B) facilities must be degassed using best management practices to ensure air contaminants are removed from the system to the extent allowed by process equipment or storage vessel design. Emissions must be directed out the top of floating roof tanks;

(C) tanks and vessels degassed by forced ventilation are limited to degassing a single tank or vessel at a time;

(D) in lieu of the requirements in subparagraphs (A) and (B), or (C) of this paragraph, facilities may route emissions through a closed system to a control device; and

(E) emptying tanks for convenience purposes is not authorized; and

(10) facilities used for abrasive blasting, surface preparation, and surface coating on equipment and structures used at the site in oil and gas handling or production.

(c) Best Management Practices.

(1) All facilities with the potential to emit air contaminants must be maintained in good working order and operated properly.

(2) Each permit holder shall establish, implement, and update, as appropriate, a program to maintain and repair facilities as required by paragraph (1) of this subsection. The minimum requirements of this program must include:

(A) a maintenance program developed by the permit holder for all equipment that is consistent with good air pollution control practices, or alternatively, manufacturer's specifications and recommended programs applicable to equipment performance and the effect on emissions;

(B) cleaning and routine inspection of all equipment;

(C) repair of equipment on timeframes that minimize equipment failures and maintain performance;

(D) training of personnel who implement the maintenance program; and

(E) records of conducted planned MSS activities.

(d) Recordkeeping. Records to demonstrate compliance with this section must be kept in accordance with §106.8(c) of this title (relating to Recordkeeping).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300936

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 239-2141



## CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

### SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§113.100, 113.120, 113.130, 113.180, 113.190, 113.230, 113.240, 113.260, 113.290, 113.300, 113.340, 113.390, 113.400, 113.410, 113.420, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.670, 113.690, 113.770, 113.790, 113.880, 113.890, 113.1040, 113.1090, 113.1110, 113.1140, 113.1160, 113.1170, 113.1390, 113.1400, and 113.1410; the repeal of §§113.150, 113.1190, and 113.1200; and new §§113.1130, 113.1300, 113.1320, 113.1340, 113.1350, 113.1370, 113.1380, 113.1425, 113.1435, 113.1445, 113.1450, 113.1455, 113.1460, 113.1465, 113.1470, 113.1475, 113.1480, 113.1485, 113.1495, 113.1500, 113.1505, 113.1510, 113.1515, 113.1520, 113.1525, 113.1530, 113.1535, and 113.1555.

#### Background and Summary of the Factual Basis for the Proposed Rules

The proposal would revise Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, to incorporate by reference changes that the United States Environmental Protection Agency (EPA) has made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63. The EPA's changes to 40 CFR Part 63 include amendments to a number of existing NESHAPs and the promulgation of a number of new NESHAPs. In addition, three NESHAPs have been vacated by court actions since the last time Chapter 113 was revised.

The proposed amendments to Chapter 113 would incorporate by reference amendments and additions that the EPA made to the NESHAP under 40 CFR Part 63 as published through December 21, 2012. These standards are required by the Federal Clean

Air Act (FCAA) Amendments of 1990, §112, which requires the EPA to develop national technology-based standards for new and existing sources of hazardous air pollutants (HAPs) listed in FCAA, §112. These technology-based standards are commonly called maximum achievable control technology (MACT) and generally available control technology (GACT) standards. The MACT standards are generally required to be based on the maximum degree of emission control that is achievable, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. The GACT standards reflect a less stringent level of control (relative to MACT) and are intended to be applied to non-major sources of HAPs, known as area sources. The EPA has the option to apply either MACT or GACT to area sources, at their discretion.

The proposed new sections would incorporate 25 recently-promulgated MACT and GACT standards for a variety of area source categories by reference. The proposed new sections would also incorporate three new MACT standards covering certain major source categories by reference.

The commission also proposes to repeal three existing sections of Chapter 113, as those sections reference MACT standards that have been vacated by court decisions and are no longer in effect. The sections proposed for repeal are §113.150, Polyvinyl Chloride and Copolymers Production (40 CFR 63, Subpart J); §113.1190, Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ); and §113.1200, Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK).

Under federal law, affected industries are required to implement the MACT and GACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT and GACT standards are promulgated or amended by the EPA, they are reviewed by commission staff for compatibility with current commission regulations and policies. The commission then incorporates them, as appropriate, into Chapter 113 through the formal rulemaking procedures. Unless otherwise noted, all incorporations by reference proposed in this rulemaking are without change (meaning that the standards are incorporated as published, with no modifications to the text of the regulation being incorporated). After each MACT or GACT standard or amendment is adopted, the commission will seek formal delegation from the EPA under 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities, which implements FCAA, §112(l). Upon delegation, the commission will be responsible for administering and enforcing the MACT or GACT requirements.

The commission proposes to incorporate the following amendments that the EPA has made to the 40 CFR Part 63, General Provisions, and the federal MACT and GACT standards previously incorporated into the commission rules, by updating the federal promulgation dates and *Federal Register* (FR) citations stated in the commission rules, as discussed more specifically in the Section by Section Discussion in this preamble. The 36 amended standards, along with their corresponding Chapter 113 sections and original incorporation dates, are listed in the following table (Figure 1).

Figure 1: 30 TAC Chapter 113--Preamble

The commission proposes to incorporate by reference without change 28 recently-promulgated federal MACT and GACT standards not currently included in Chapter 113, as summarized in the following table (Figure 2).

Figure 2: 30 TAC Chapter 113--Preamble

Certain major source and area source regulations recently promulgated by the EPA are undergoing reconsideration, which may result in additional changes to those standards. These regulations include the EPA's recent standards for Industrial, Commercial, and Institutional Boilers (both major and area sources); Coal- and Oil-fired Electric Utility Steam Generating Units; and Portland Cement Manufacturing. The EPA signed reconsideration amendments to the Boiler and Portland Cement standards on December 20, 2012, but those amendments have not yet been published in the FR at the time this preamble was drafted. The commission has provided information regarding these reconsideration actions in the Section by Section Discussion of this preamble. The commission requests comments regarding the incorporation by reference of all final reconsideration actions by the EPA, whether or not noted in this notice, to facilitate state delegation and implementation of the final NESHAP.

This rulemaking does not include the EPA's recently-promulgated standard for Gold Mine Ore Processing and Production Area Sources (40 CFR 63 Subpart EEEEEEE) as, based on an informal review of agency records, it appears that Texas does not currently have a significant gold ore processing industry. However, the commission solicits comment on whether there are any facilities in Texas, which would be subject to the NESHAP for Gold Mine Ore Processing and Production Area Sources. If no facilities subject to this standard are identified, TCEQ will prepare and submit a negative declaration for this source category.

For implementation and enforcement of the area source standards, the commission generally intends to follow the approach outlined in the EPA's Area Source Rule Implementation Guidance dated June 4, 2010. This EPA guidance prioritizes the area source standards based on environmental impact and the potential for emission reductions. Group 1 standards have the highest potential for emission reductions and environmental impact, with Groups 2 and 3 having a lower potential for emission reductions and environmental impact. The EPA's guidance explains that for Group 1 standards, the EPA recommends an approach using direct compliance monitoring and enforcement. For the Group 2 and Group 3 standards, the EPA recommends the use of compliance assistance and outreach programs as the primary means of implementation and enforcement.

#### Section by Section Discussion

##### *§113.100, General Provisions (40 Code of Federal Regulations Part 63, Subpart A)*

The commission proposes to amend §113.100 by incorporating by reference all amendments to 40 CFR Part 63, Subpart A since this section was last amended. During this period, the EPA amended Subpart A on May 6, 2008 (73 FR 24870), December 22, 2008 (73 FR 78199), September 13, 2010 (75 FR 55636), November 12, 2010 (75 FR 69348), and August 11, 2011 (76 FR 49669). The EPA also made numerous amendments to 40 CFR §63.14 of Subpart A, which are addressed in a separate paragraph of this Section by Section Discussion. The May 6, 2008, amendments to Subpart A revised 40 CFR §63.13(a), Addresses of State air pollution control agencies and EPA Regional Offices, to update the mailing address used to submit reports and correspondence to EPA Region VIII. The December 22, 2008, amendments revised 40 CFR §63.11, Control device and work practice requirements, to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and

repair requirements. The September 13, 2010, amendments revised the General Provisions to allow accredited providers to supply stationary source audit samples and to require sources to obtain and use these samples from the accredited providers instead of from the EPA, and relocated all requirements pertaining to audit samples from the test methods themselves into the General Provisions. The November 12, 2010, amendments revised 40 CFR §63.13(a) to update the mailing address used to submit reports and correspondence to EPA Region IX. The August 11, 2011, amendments revised 40 CFR §63.13(a) to update the mailing address used to submit reports and correspondence to EPA Region I. Although the changes to EPA Regional mailing addresses described in this paragraph do not affect states in EPA Region VI such as Texas, it is administratively more efficient to include these amendments than to specifically exclude them.

The amendments to 40 CFR Part 63, Subpart A proposed to be incorporated by reference in this action also include all revisions to 40 CFR §63.14. Incorporations by reference, adopted by the EPA on or before September 11, 2012. During this period, 40 CFR §63.14 was amended by the EPA numerous times to update test methods and reference documents as needed to support the standards in 40 CFR Part 63. The individual changes to 40 CFR §63.14 can be found by consulting the List of CFR Sections Affected, published by the Office of the FR, National Archives and Records Administration. A table (Figure 3) showing the FR publication dates and page numbers associated with the amendments to 40 CFR §63.14 follows.

Figure 3: 30 TAC Chapter 113--Preamble

All of these revisions to 40 CFR §63.14 are proposed to be incorporated by reference as part of the proposed revisions to §113.100. The most recent revision date to 40 CFR §63.14 was September 11, 2012, which is the date cited in §113.100 for the proposed incorporation of Subpart A.

The commission also proposes to replace the term "his/her" as used in §113.100 with more general terminology consistent with current rule writing practices.

*§113.120, Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)*

The commission proposes to amend §113.120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart G since this section was last amended. During this period, the EPA amended Subpart G on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart G to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.130, Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H)*

The commission proposes to amend §113.130 by incorporating by reference all amendments to 40 CFR Part 63, Subpart H since this section was last amended. During this period, the EPA amended Subpart H on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart H to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.150, Polyvinyl Chloride and Copolymers Production (40 CFR 63, Subpart J)*

The commission proposes to repeal §113.150, as the corresponding MACT standard was vacated by the decision of the United States Court of Appeals for the District of Columbia Circuit in *Mossville Env. Action Now v. EPA*, 370 F. 3d 1232, on June 18, 2004, and is no longer in effect. The EPA has promulgated revised standards for polyvinyl chloride (PVC) production in response to the vacatur of Subpart J, and the commission is also proposing to adopt the revised standards as part of this proposed rulemaking, in new §113.1555, Polyvinyl Chloride and Copolymers Production Major Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHHH), in addition to proposing to adopt revised standards for PVC production at area sources in §113.1390, Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDDD). These revised standards for PVC production are further addressed in the Section by Section Discussion for §113.1390 and new §113.1555.

*§113.180, Perchloroethylene Dry Cleaning Facilities (40 Code of Federal Regulations Part 63, Subpart M)*

The commission proposes to amend §113.180 by incorporating by reference all amendments to 40 CFR Part 63, Subpart M since this section was last amended. During this period, the EPA amended Subpart M on July 11, 2008 (73 FR 39871). The July 11, 2008, amendments corrected erroneous cross references, corrected typographical errors in the rule text, and clarified monitoring requirements.

*§113.190, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)*

The commission proposes to amend §113.190 by incorporating by reference all amendments to 40 CFR Part 63, Subpart N since this section was last amended. During this period, the EPA amended Subpart N on September 19, 2012 (77 FR 58220). The September 19, 2012, amendments finalized the EPA's residual risk and technology review for this source category. The amendments included revisions to the emissions limits for total chromium; the addition of housekeeping requirements to minimize fugitive emissions; and a requirement to phase-out the use of perfluorooctane sulfonic acid based fume suppressants. In addition, the amendments revised testing, monitoring, record-keeping, and reporting requirements; revised regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); and added provisions to provide for an affirmative defense against civil penalties.

*§113.230, Gasoline Distribution Facilities (40 Code of Federal Regulations Part 63, Subpart R)*

The commission proposes to amend §113.230 by incorporating by reference all amendments to 40 CFR Part 63, Subpart R since this section was last amended. During this period, the EPA amended Subpart R on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart R to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.240, Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S)*

The commission proposes to amend §113.240 by incorporating by reference all amendments to 40 CFR Part 63, Subpart S since this section was last amended. During this period, the EPA amended Subpart S on September 11, 2012 (77 FR 55698).

The September 11, 2012, amendments finalized the EPA's residual risk and technology review for this source category. The amendments included a requirement for five-year repeat emissions testing for selected process equipment; revisions to provisions addressing periods of SSM; a requirement for electronic reporting of performance test results; additional test methods for measuring methanol emissions; and other technical and editorial changes.

*§113.260, Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U)*

The commission proposes to amend §113.260 by incorporating by reference all amendments to 40 CFR Part 63, Subpart U since this section was last amended. During this period, the EPA amended Subpart U on December 22, 2008 (73 FR 78199) and April 21, 2011 (76 FR 22566). The December 22, 2008, amendments added references to Subpart U to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements. The April 21, 2011, amendments finalized the EPA's residual risk and technology review for this source category (which consists of facilities producing butyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, polybutadiene rubber, polysulfide rubber, and styrene butadiene rubber and latex). The April 21, 2011, amendments also included revisions related to emissions during periods of SSM; revisions addressing electronic submission of emission test results; and provisions to provide for an affirmative defense against civil penalties.

*§113.290, Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)*

The commission proposes to amend §113.290 by incorporating by reference all amendments to 40 CFR Part 63, Subpart X since this section was last amended. During this period, the EPA amended Subpart X on January 5, 2012 (77 FR 556). The January 5, 2012, amendments finalized the EPA's residual risk and technology review for this source category. These amendments included revisions to the emissions limits for lead compounds; revisions to the standards for fugitive emissions; the addition of total hydrocarbon and dioxin and furan emissions limits for reverberatory and electric furnaces; the addition of a work practice standard for mercury emissions; the modification and addition of testing and monitoring, recordkeeping, and reporting requirements and related notifications; revisions to provisions related to emissions during periods of SSM; and minor corrections for editorial purposes and plain language corrections.

*§113.300, Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y)*

The commission proposes to amend §113.300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart Y since this section was last amended. During this period, the EPA amended Subpart Y on April 21, 2011 (76 FR 22566). The April 21, 2011, amendments finalized the EPA's residual risk and technology review for this source category. The amendments added standards for two subcategories of marine vessel loading facilities for which the current MACT standards did not include emission standards. For these source categories, the EPA added a requirement for the facilities to perform submerged filling. The amendments also eliminated the exemption for SSM emissions, and revised the SSM-associated monitoring, recordkeeping, and reporting requirements to require reporting and recordkeeping for periods of malfunction. The amendments also added pro-

visions for an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense. Additionally, the amendments required the electronic submittal of performance test data to increase the ease and efficiency of data submittal and to improve data accessibility. In addition, the commission proposes to update the name of this source category and this section to Marine Tank Vessel Loading Operations.

*§113.340, Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)*

The commission proposes to amend §113.340 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CC since this section was last amended. During this period, the EPA amended Subpart CC on October 28, 2009 (74 FR 55670) and June 30, 2010 (75 FR 37730). The October 28, 2009, amendments added leak detection requirements for heat exchange systems in organic HAP service. In addition, the October 28, 2009, amendments deleted methyl ethyl ketone from the list of HAPs in Tables 1 and 7 because this compound has been delisted as a HAP. The June 30, 2010, amendments made corrections for typographical errors and inadvertent errors to section references, and made additional clarifying amendments to Subpart CC.

*§113.390, Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH)*

The commission proposes to amend §113.390 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HH, made by the EPA since this section was last amended. During this period, the EPA amended Subpart HH on December 22, 2008 (73 FR 78199) and August 16, 2012 (77 FR 49490). The December 22, 2008, amendments added references to Subpart HH to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements. The August 16, 2012, amendments finalized the residual risk and technology review for this source category, and included new emission limits reflecting MACT for certain previously uncontrolled emission sources in this source category (such as small glycol dehydrators). The August 16, 2012, amendments also revised leak detection and repair requirements; testing and monitoring requirements; and notification, recordkeeping and reporting requirements. In addition, the August 16, 2012, amendments eliminated the exemption for SSM emissions, and added provisions for an affirmative defense for exceedances of emission standards caused by malfunctions.

The August 16, 2012, final rule is being challenged by multiple petitioners through reconsideration requests to EPA and petitions for review in the District of Columbia Court of Appeals; however, it remains effective and applicable to affected sources. The commission solicits comment on whether to incorporate the currently effective Subpart HH, or to postpone incorporation of Subpart HH until after any reconsideration actions or court actions are resolved.

*§113.400, Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II)*

The commission proposes to amend §113.400 to reflect the EPA's withdrawal of the December 29, 2006, direct final amendments (71 FR 78369), and to incorporate by reference amendments promulgated by the EPA on November 21, 2011 (76 FR 72050). The December 29, 2006, direct final amendments were included in the last revision to §113.400. However, the EPA withdrew the December 29, 2006, direct final amend-

ments on February 27, 2007 (72 FR 8630) due to adverse comments and the amendments are no longer in effect. The November 21, 2011, amendments finalized the EPA's residual risk and technology review for this source category, and also revised the requirements relating to emissions during periods of SSM to eliminate the malfunction exemption. In addition, the November 21, 2011, amendments provided for an affirmative defense against potential violations of emission standards caused by malfunctions.

*§113.410, Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ)*

The commission proposes to amend §113.410 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJ since this section was last amended. During this period, the EPA amended Subpart JJ on November 21, 2011 (76 FR 72050). These amendments finalized the EPA's residual risk and technology review for this source category, added two alternate compliance options for emissions of formaldehyde, and finalized a prohibition on the use of conventional spray guns. The November 21, 2011, amendments also included clarifying language to better identify the types of operations subject to Subpart JJ. These amendments also eliminated the SSM malfunction exemption, provided for other revisions related to emissions during SSM, provided for an affirmative defense against potential violations of emission standards caused by malfunctions, and added requirements for electronic reporting of performance test results.

*§113.420, Printing and Publishing (40 Code of Federal Regulations Part 63, Subpart KK)*

The commission proposes to amend §113.420 by incorporating by reference all amendments to 40 CFR Part 63, Subpart KK since this section was last amended. During this period, the EPA amended Subpart KK on April 21, 2011 (76 FR 22566). The April 21, 2011, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments also eliminated the SSM exemption, provided for other revisions related to emissions during SSM, and provided for an affirmative defense for exceedances of emission standards caused by malfunctions. The amendments also addressed electronic submission of performance test results.

*§113.560, Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)*

The commission proposes to amend §113.560 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YY since this section was last amended. During this period, the EPA published a CFR correction to Subpart YY, on June 29, 2007 (72 FR 35663). A CFR correction is a correction of a minor error in the CFR which is not subject to public comment. The June 29, 2007, CFR correction added a definition of organic HAP to 40 CFR §63.1103, Source Category-Specific Applicability, Definitions, and Requirements.

*§113.600, Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 Code of Federal Regulations Part 63, Subpart CCC)*

The commission proposes to amend §113.600 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCC since this section was last amended. During this period, the EPA amended Subpart CCC on September 19, 2012 (77 FR 58220). The September 19, 2012, amendments finalized the EPA's residual risk and technology review for this source cate-

gory. The amendments deleted an alternative compliance option provided in the original rule because it allowed a source to establish a source specific limit, which could be less stringent than MACT. The September 19, 2012, amendments also eliminated the SSM exemption, provided for other revisions related to emissions during SSM, and provided for an affirmative defense for exceedances of emission standards caused by malfunctions. In addition, the amendments addressed electronic submission of performance test results.

*§113.610, Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)*

The commission proposes to amend §113.610 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDD since this section was last amended. During this period, the EPA amended Subpart DDD on December 1, 2011 (76 FR 74708). The December 1, 2011, amendments reinstated 40 CFR §63.1196, What definitions should I be aware of?

*§113.620, Hazardous Waste Combustors (40 Code of Federal Regulations Part 63, Subpart EEE)*

The commission proposes to amend §113.620 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEE since this section was last amended. During this period, the EPA amended Subpart EEE on April 8, 2008 (73 FR 18970) and October 28, 2008 (73 FR 64068). The April 8, 2008, amendments clarified several compliance and monitoring provisions and also corrected several omissions and typographical errors in 40 CFR Part 63, Subpart EEE. The October 28, 2008, amendments addressed eight issues raised in petitions for reconsideration. The October 28, 2008, amendments also addressed comments relating to a post-promulgation decision of the United States Court of Appeals for the District of Columbia Circuit, in *Sierra Club v. EPA*, 479 F. 3d 875, (the Brick MACT litigation). The October 28, 2008, amendments also revised the new source standard for particulate matter (PM) for cement kilns and for incinerators that burn hazardous waste, amended the PM matter detection system provisions, revised the health-based compliance alternative for total chlorine, and made several corrections and clarifications.

*§113.640, Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)*

The commission proposes to amend §113.640 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGG since this section was last amended. During this period, the EPA amended Subpart GGG on December 22, 2008 (73 FR 78199) and April 21, 2011 (76 FR 22566). The December 22, 2008, amendments added references to Subpart GGG to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements. The April 21, 2011, amendments finalized the EPA's residual risk and technology review for this source category, and corrected an editorial error. The April 21, 2011, amendments also eliminated the SSM exemption, provided for other revisions related to emissions during SSM, and provided for an affirmative defense for exceedances of emission standards caused by malfunctions. The April 21, 2011, amendments also addressed electronic submission of performance test results.

*§113.650, Natural Gas Transmission and Storage Facilities (40 Code of Federal Regulations Part 63, Subpart HHH)*

The commission proposes to amend §113.650 by incorporating by reference, without change, all amendments to 40 CFR Part

63, Subpart HHH, made by the EPA since this section was last amended. During this period, the EPA amended Subpart HHH on December 22, 2008 (73 FR 78199) and August 16, 2012 (77 FR 49490). The December 22, 2008, amendments added references to Subpart HHH to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements. The August 16, 2012, amendments finalized the residual risk and technology review for this source category, and included new emission limits reflecting MACT for certain previously uncontrolled emission sources in this source category (such as small glycol dehydrators). The August 16, 2012, amendments also revised testing and monitoring requirements and notification, recordkeeping, and reporting requirements. The August 16, 2012, amendments also eliminated the exemption for SSM emissions, provided for other revisions related to emissions during SSM, and added provisions for an affirmative defense for exceedances of emission standards caused by malfunctions.

Multiple petitioners are challenging the August 16, 2012, final rule through reconsideration requests to EPA and petitions for review in the District of Columbia Court of Appeals. The August 16, 2012, final rule remains effective and applicable to affected sources. The commission solicits comment on whether to incorporate the currently effective Subpart HHH, or to postpone incorporation of Subpart HHH until after any reconsideration actions or court actions are resolved.

*§113.670, Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)*

The commission proposes to amend §113.670 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJ since this section was last amended. During this period, the EPA amended Subpart JJJ on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart JJJ to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.690, Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)*

The commission proposes to amend §113.690 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LLL since this section was last amended. During this period, the EPA amended Subpart LLL on September 9, 2010 (75 FR 54970) and January 18, 2011 (76 FR 2832). The September 9, 2010, amendments added or revised emission limits for mercury, total hydrocarbons, and PM from new and existing kilns located at major and area sources, and for hydrochloric acid (HCl) from new and existing kilns located at major sources. The September 9, 2010, amendments also eliminated the SSM exemption and provided for an affirmative defense for exceedances of emission standards caused by malfunctions. The January 18, 2011, amendments revised regulatory language to clarify compliance dates and clarify that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits.

The EPA published a limited reconsideration of the September 9, 2010, rule on July 18, 2012 (77 FR 42368). The EPA signed a final rule reconsidering the Portland Cement Manufacturing MACT on December 20, 2012, but this final rule has not yet been published in the FR as of the date this preamble was drafted. The rule signed by the EPA on December 20, 2012, retained the stack emission standards for mercury, HCl, and total hydrocar-

bons (THC) under the NESHAP, amended the stack emission standard for PM under the NESHAP, and made a conforming amendment to the New Source Performance Standard for PM. The amendments also included provisions to account for commingled HAP emissions from coal mills that are an integral part of the kiln, established a continuous monitoring regime for parametric monitoring of PM, set work practice standards for startup and shutdown, and revised the compliance date for the PM, mercury, HCl, THC, and clinker storage pile existing source standards. The EPA retained the affirmative defense for civil penalties for violations of emission limits occurring as a result of a malfunction.

The commission solicits comment on whether the currently-effective (January 18, 2011) rule should be incorporated by reference as proposed, or if the commission should incorporate the amended rules signed by the EPA on December 20, 2012. At the time this preamble was drafted, the FR citation (date, volume, and page number) associated with the amendments signed by the EPA on December 20, 2012, is not available, so it is not possible to draft specific rule language incorporating the December 20, 2012, version of the rule at this time. However, it is the commission's intention to incorporate the rules signed on December 20, 2012, once those rules have been formally published in the FR, unless adverse comments on such an action are received.

*§113.770, Primary Lead Processing (40 Code of Federal Regulations Part 63, Subpart TTT)*

The commission proposes to amend §113.770 by incorporating by reference all amendments to 40 CFR Part 63, Subpart TTT since this section was last amended. During this period, the EPA amended Subpart TTT on November 15, 2011 (76 FR 70834). The November 15, 2011, amendments finalized the EPA's residual risk and technology review for this source category, and revised the title and applicability provisions of this source category. The amendments also revised the stack emission limits for lead, revised work practice standards to minimize fugitive dust emissions, and revised testing, monitoring, and related notification, recordkeeping, and reporting requirements. In addition, the November 15, 2011, amendments eliminated the SSM exemption, provided for other revisions related to emissions during SSM, and provided for an affirmative defense for exceedances of emission standards caused by malfunctions.

*§113.790, Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV)*

The commission proposes to amend §113.790 by incorporating by reference all amendments to 40 CFR Part 63, Subpart VVV since this section was last amended. During this period, the EPA amended Subpart VVV on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart VVV to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.880, Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE)*

The commission proposes to amend §113.880 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEEE since this section was last amended. During this period, the EPA published amendments to Subpart EEEE on April 23, 2008 (73 FR 21825), July 17, 2008 (73 FR 40977), and December 22, 2008 (73 FR 78199). The April 23, 2008, amendments clarified combustion control device compliance requirements, storage tank control compliance dates, and vapor balance system

monitoring requirements. In addition, the April 23, 2008, amendments corrected various typographical errors in 40 CFR Part 63, Subpart EEEE. However, the EPA received adverse comments on some portions of the April 23, 2008, direct final amendments, and subsequently withdrew those portions of the amendments. The adverse comments related to the storage tank compliance date and the monitoring of storage tank pressure relief devices. The July 17, 2008, amendments responded to the adverse comments and implemented the April 23, 2008, direct final amendments that had been withdrawn. The July 17, 2008, amendments also corrected typographical errors that the EPA identified in other sections of the rule text that were not addressed in the April 23, 2008, notices. The December 22, 2008, amendments added references to Subpart EEEE to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.890, Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF)*

The commission proposes to amend §113.890 by incorporating by reference all amendments to 40 CFR Part 63, Subpart FFFF since this section was last amended. During this period, the EPA amended Subpart FFFF on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart FFFF to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.1040, Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU)*

The commission proposes to amend §113.1040 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUU since this section was last amended. During this period, the EPA amended Subpart UUUU on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments added references to Subpart UUUU to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.1090, Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)*

The commission proposes to amend §113.1090 by incorporating by reference all amendments to 40 CFR Part 63, Subpart ZZZZ since this section was last amended. During this period, the EPA amended Subpart ZZZZ on January 18, 2008 (73 FR 3568), March 3, 2010 (75 FR 9648), June 30, 2010 (75 FR 37732), August 20, 2010 (75 FR 51570), and March 9, 2011 (76 FR 12863). The January 18, 2008, amendments to Subpart ZZZZ established national emission standards for new and reconstructed stationary reciprocating internal combustion engines (RICE) that are: 1) located at area sources of HAP emissions; or 2) have a site rating of less than or equal to 500 brake horsepower and are located at major sources of HAP emissions. The March 3, 2010, amendments established national emissions standards for existing stationary compression ignition RICE that are: 1) located at area sources of HAP emissions; or that 2) have a site rating of less than or equal to 500 brake horsepower and are located at major sources of HAP emissions. In addition, the March 3, 2010, amendments promulgated NESHAP for existing non-emergency stationary compression ignition engines greater than 500 brake horsepower located at major sources of HAP emissions. The March 3, 2010, amendments also revised provisions related to SSM for engines. The June 30, 2010, amendments restored two paragraphs that were inadvertently removed from Subpart

ZZZZ during the promulgation of the March 3, 2010, amendments. The August 20, 2010, amendments promulgated NESHAP for existing stationary spark ignition RICE that are located at area sources of HAP emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of HAP emissions. The March 9, 2011, amendments revised regulatory text to clarify compliance requirements related to continuous parameter monitoring systems, and corrected minor typographical errors in the regulatory text of the August 20, 2010, action. The commission also proposes to remove the word "stationary" from the title of this section, as the EPA no longer uses that term in the title of this NESHAP.

*§113.1110, Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBB)*

The commission proposes to amend §113.1110 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BBBB since this section was last amended. During this period, the EPA amended Subpart BBBB on July 22, 2008 (73 FR 42529). The July 22, 2008, amendments established a new MACT floor level of control for existing and new combined HAP process vent streams, and clarified the applicability of this NESHAP by adding definitions for organic, inorganic, and combined HAP process vent streams.

*§113.1130, Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDD)*

The commission proposes new §113.1130 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart DDDD, adopted by the EPA on September 13, 2004 (69 FR 55218), with amendments published on December 28, 2005 (70 FR 76918), April 20, 2006 (71 FR 20446), December 6, 2006 (71 FR 70651), and March 21, 2011 (76 FR 15608). This MACT standard regulates HAP emissions from boilers and process heaters located at major sources of HAP. HAPs emitted from these facilities include hydrogen chloride, formaldehyde, polycyclic organic matter, acetaldehyde, benzene, and metal compounds such as arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium. The December 28, 2005, amendments clarified the process for demonstrating eligibility for the health-based compliance alternatives contained in the rule. The April 20, 2006, amendments revised the general and compliance requirements as they related to SSM. The December 6, 2006, amendments clarified the procedures for implementing the emissions averaging provision and for conducting compliance testing when boilers are vented to a common stack. In addition, the December 6, 2006, amendments clarified certain definitions.

The District of Columbia Court of Appeals, in *Natural Resources Defense Council v. EPA*, 489 F.3d 1250, June 8, 2007, vacated and remanded the provisions of the Boiler MACT, 40 CFR Part 63, Subpart DDDD, published September 13, 2004 (69 FR 55218). This is because the court had also vacated the Commercial and Industrial Solid Waste Incineration (CISWI) Definitions Rule, September 22, 2005 (70 FR 55568). The vacatur of the CISWI definitions rule resulted in a need for the Boiler MACT to also be revised because the applicability of the Boiler MACT would be affected once the EPA revised the CISWI definitions rule to be consistent with the opinion of the court. In response to the vacatur of the Boiler MACT, the EPA adopted revisions to the Boiler MACT on March 21, 2011 (76 FR 15608). However, on March 21, 2011, the EPA also issued a notice that it intended to reconsider the final rule (76 FR 15266) and a notice delaying



the effective date of the final Boiler MACT rules (76 FR 28662), until such time as judicial review was completed, or the EPA finalized reconsideration of the rules, whichever was earlier. This notice of delay was challenged, and was vacated by the District of Columbia Court of Appeals in *Sierra Club v. Jackson*, 833 F. Supp.2d 11, January 9, 2012. The March 21, 2011, revisions to the Boiler MACT are also being challenged by multiple petitioners, and have been consolidated into one proceeding, *U.S. Sugar Corp. v. EPA*, No. 11-1108, in the District of Columbia Court of Appeals.

The EPA proposed reconsideration amendments to Subpart DDDDD on December 23, 2011 (76 FR 80598). The EPA signed a final rule reconsidering the Boiler major source MACT on December 20, 2012, but this final rule has not yet been published in the FR as of the date this preamble was drafted. The rule signed by the EPA on December 20, 2012, included numerous changes. The EPA's review of existing and new data resulted in changes to emission limits for various pollutants. Overall, for both new and existing affected units, about 30% of the emission limits are more stringent, half are less stringent, and 20% unchanged as compared to the March 2011 final rule. The EPA also established an alternative emission standard for carbon monoxide (CO), based on continuous emission monitoring system (CEMS) data for several subcategories. The amendments also added periodic tune-up work practices to address dioxin and furan emissions. In addition, the EPA updated the compliance dates for new and existing sources. The amendments revised the list of exemptions to include residential boilers that may be located at an industrial, commercial, or institutional major source. The exemption for boilers or process heaters used specifically for research and development was revised to include boilers used for certain testing purposes. The amendments clarified that the exemption for boilers and process heaters used for research and development includes boilers used for testing the propulsion systems on military vessels. The amendments also revised work practice standards for periods of startup and shutdown to better reflect MACT during those periods. In addition, the amendments added definitions of startup and shutdown and revised the definition of the limited use subcategory. The amendments additionally made numerous technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by petitioners and other stakeholders.

The commission solicits comment on whether the currently-effective (March 21, 2011) rule should be incorporated by reference as proposed, or if the commission should incorporate the amended rules signed by the EPA on December 20, 2012. At the time this preamble was drafted, the FR citation (date, volume, and page number) associated with the amendments signed by the EPA on December 20, 2012, is not available, so it is not possible to draft specific rule language incorporating the December 20, 2012, version of the rule at this time. However, it is the commission's intention to incorporate the rules signed on December 20, 2012, once those rules have been formally published in the FR, unless adverse comments on such an action are received.

*§113.1140, Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEEE)*

The commission proposes to amend §113.1140 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEEEE since this section was last amended. During this period, the EPA amended Subpart EEEEE, on February 7, 2008 (73 FR 7210). The February 7, 2008, amendments added alternative

compliance options for cupolas at existing foundries and clarified several provisions to increase operational flexibility and improve readability of the rule requirements.

*§113.1160, Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGGG)*

The commission proposes to amend §113.1160 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGGGG since this section was last amended. During this period, the EPA amended Subpart GGGGG on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments revised Subpart GGGGG to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.1170, Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHHH)*

The commission proposes to amend §113.1170 by incorporating by reference all amendments to 40 CFR Part 63, Subpart HHHHH since this section was last amended. During this period, the EPA amended Subpart HHHHH on December 22, 2008 (73 FR 78199). The December 22, 2008, amendments revised Subpart HHHHH to allow an alternative work practice using optical gas imaging technology as a method to meet leak detection and repair requirements.

*§113.1190, Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)*

The commission proposes to repeal §113.1190, as this MACT standard was vacated by the decision of the United States Court of Appeals for the District of Columbia Circuit in *Sierra Club v. EPA*, 479 F.3d 875, on March 13, 2007, and is no longer in effect. The EPA has not adopted revised standards for this source category.

*§113.1200, Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)*

The commission proposes to repeal §113.1200, as this MACT standard was vacated by the decision of the United States Court of Appeals for the District of Columbia Circuit in *Sierra Club v. EPA*, 479 F.3d 875, on March 13, 2007, and is no longer in effect. The EPA has not adopted revised standards for this source category.

*§113.1300, Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU)*

The commission proposes new §113.1300 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart UUUUU, adopted by the EPA on February 16, 2012 (77 FR 9304), with amendments published on April 19, 2012 (77 FR 23399). This rule is commonly referred to as the Mercury Air Toxics Standard (MATS). This MACT standard regulates HAP emissions from coal- and oil-fired electric utility steam generating units located at major or area sources of HAP. HAPs emitted from these facilities include hydrogen chloride, hydrogen fluoride, and metal compounds such as selenium, arsenic, chromium, and nickel. The April 19, 2012, amendments corrected typographical errors, such as invalid cross-references and preamble text that was not consistent with the final regulatory text.

The February 16, 2012, final rule is being challenged by the TCEQ and multiple petitioners through both reconsideration requests to the EPA and petitions for review in the District of Columbia Court of Appeals. The EPA recently published a limited reconsideration of the final rule on November 30, 2012 (77 FR

71323). The February 16, 2012, final rule remains currently effective, and applicable to affected sources. The EPA has not yet adopted a final rule reconsidering the MATS. The commission solicits comment on whether the current rule should be incorporated by reference, as proposed, or if incorporation should be postponed until after any reconsideration actions or court actions are resolved.

*§113.1320, Hospital Ethylene Oxide Sterilizers Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWW)*

The commission proposes new §113.1320 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart WWWW, adopted by the EPA on December 28, 2007 (72 FR 73611). This GACT standard regulates HAP emissions from hospital ethylene oxide sterilizers located at area sources of HAP. The HAP emitted from these facilities is ethylene oxide.

*§113.1340, Electric Arc Furnace Steelmaking Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYY)*

The commission proposes new §113.1340 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart YYYY, adopted by the EPA on December 28, 2007 (72 FR 74088). This MACT and GACT standard regulates HAP emissions from electric arc furnace steelmaking facilities that are area sources of HAP. HAPs emitted from these facilities include mercury, chromium, lead, manganese, nickel, and other metals.

*§113.1350, Iron and Steel Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZ)*

The commission proposes new §113.1350 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart ZZZZ, adopted by the EPA on January 2, 2008 (73 FR 226). This GACT standard regulates HAP emissions from iron and steel foundries that are area sources of HAP. HAPs emitted from these facilities include compounds of mercury, chromium, lead, manganese, and nickel.

*§113.1370, Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBB)*

The commission proposes new §113.1370 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart BBBB, adopted by the EPA on January 10, 2008 (73 FR 1916), with amendments published by the EPA on March 7, 2008 (73 FR 12275) and January 24, 2011 (76 FR 4156). This GACT standard regulates HAP emissions from gasoline distribution bulk terminals, bulk plants, and pipeline facilities that are area sources of HAP. HAPs emitted from these facilities include benzene, ethylbenzene, hexane, toluene, xylenes, isooctane, naphthalene, cumene, and methyl tert-butyl ether. The March 7, 2008, amendments corrected errors in citations for test methods, corrected cross references within 40 CFR Part 63, Subpart BBBB, and corrected references to the regulation's promulgation date that were intended to refer to the compliance date. The January 24, 2011, amendments clarified certain definitions, applicability-related provisions, and compliance-related provisions in response to issues raised in the petitions for reconsideration.

*§113.1380, Gasoline Dispensing Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCC)*

The commission proposes new §113.1380 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart CCCCC, adopted by the EPA on January 10, 2008

(73 FR 1916), with amendments published on March 7, 2008 (73 FR 12275), June 25, 2008 (73 FR 35939), and January 24, 2011 (76 FR 4156). This GACT standard regulates HAP emissions from gasoline dispensing facilities that are area sources of HAP. HAPs emitted from these facilities include benzene, ethylbenzene, hexane, toluene, xylenes, isooctane, naphthalene, cumene, and methyl tert-butyl ether. The March 7, 2008, amendments corrected a number of errors in rule citations and cross references. The June 25, 2008, amendments revised the pressure and vacuum vent valve cracking pressure and leak rate requirements for vapor balance systems used to control emissions. The January 24, 2011, amendments clarified certain definitions, applicability-related provisions, and compliance-related provisions in response to issues raised in the petitions for reconsideration.

*§113.1390, Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD)*

The commission proposes to amend §113.1390 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDDD since this section was adopted. During this period, the EPA published amendments to Subpart DDDDD on April 17, 2012 (77 FR 22848). The April 17, 2012, amendments clarified the applicability of Subpart DDDDD to existing and new area sources, and revised GACT requirements for this source category.

*§113.1400, Primary Copper Smelting Area Sources (40 Code of Federal Regulations Part 63, Subpart EEEEE)*

The commission proposes to amend §113.1400 by incorporating by reference all amendments to 40 CFR Part 63, Subpart EEEEE since this section was adopted. During this period, the EPA published amendments to Subpart EEEEE on July 3, 2007 (72 FR 36363). The July 3, 2007, amendments clarified when exhaust gases must be controlled, and what control devices may be used. The amendments also corrected rule numbering errors. In addition, a proposed revision to §113.1400 would replace the phrase "Maximum Achievable Control Technology" with "Generally Available Control Technology," as this NESHAP is a GACT standard and not a MACT standard.

*§113.1410, Secondary Copper Smelting Area Sources (40 Code of Federal Regulations Part 63, Subpart FFFFF)*

The commission proposes to amend §113.1410 by incorporating by reference all amendments to 40 CFR Part 63, Subpart FFFFF since this section was adopted. During this period, the EPA published direct final amendments to Subpart FFFFF on July 3, 2007 (72 FR 36363). The July 3, 2007, amendments clarified the date that defines a new copper smelter, and corrected a cross-referencing error. In addition, a proposed revision to §113.1410 would replace the term "Maximum Achievable Control Technology" with "Generally Available Control Technology," as this NESHAP is a GACT standard and not a MACT standard.

*§113.1425, Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 Code of Federal Regulations Part 63, Subpart HHHHH)*

The commission proposes new §113.1425 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart HHHHH, adopted by the EPA on January 9, 2008 (73 FR 1738), with amendments published on February 13, 2008 (73 FR 8408). This GACT standard regulates HAP emissions from paint stripping and miscellaneous surface coating facilities

that are area sources of HAPs. HAPs emitted from these facilities include methylene chloride and compounds of chromium, lead, manganese, nickel, and cadmium. The February 13, 2008, amendments corrected minor errors in the rule text.

*§113.1435, Industrial, Commercial, and Institutional Boilers Area Sources (40 Code of Federal Regulations Part 63, Subpart JJJJJJ)*

The commission proposes new §113.1435 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart JJJJJJ, adopted by the EPA on March 21, 2011 (76 FR 15554). This MACT and GACT standard regulates HAP emissions from industrial, commercial, and institutional boilers that are area sources of HAP. HAPs emitted from these facilities include mercury, arsenic, beryllium, cadmium, lead, chromium, manganese, nickel, and polycyclic organic compounds.

On December 23, 2011 (76 FR 80532) the EPA proposed reconsideration amendments to Subpart JJJJJJ. The EPA signed a final rule reconsidering the Boiler area source NESHAP on December 20, 2012, but this final rule has not yet been published in the FR as of the date this preamble was drafted. The rule signed by the EPA on December 20, 2012, included numerous changes. The EPA's review of existing and new data resulted in a number of changes to emission limits for various pollutants. The EPA also established an alternative emission standard for CO, based on CEMS data for several subcategories. The amendments also added periodic tune-up work practices to address CO and mercury emissions from new and existing small coal-fired units, in lieu of numeric emission limits. In addition, the amendments updated the compliance dates for new and existing sources. The amendments also revised the list of boilers that are not part of the source categories subject to Subpart JJJJJJ, clarified certain boiler types, and included certain additional boilers located at an industrial, commercial, or institutional area source facility. The amendments also revised work practice standards for periods of startup and shutdown to better reflect MACT and GACT during those periods. In addition, the amendments added definitions of startup and shutdown and revised the definition of the limited use subcategory. The amendments additionally made numerous technical corrections to the final rule to clarify definitions, references, applicability, and compliance issues raised by petitioners and other stakeholders.

The commission solicits comment on whether the currently-effective (March 21, 2011) rule should be incorporated by reference as proposed, or if the commission should incorporate the amended rules signed by the EPA on December 20, 2012. At the time this preamble was drafted, the FR citation (date, volume, and page number) associated with the amendments signed by the EPA on December 20, 2012, is not available, so it is not possible to draft specific rule language incorporating the December 20, 2012, version of the rules at this time. However, it is the commission's intention to incorporate the rules signed on December 20, 2012, once those rules have been formally published in the FR, unless adverse comments on such an action are received.

*§113.1445, Acrylic and Modacrylic Fibers Area Sources (40 Code of Federal Regulations Part 63, Subpart LLLLLL)*

The commission proposes new §113.1445 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart LLLLLL, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard regulates HAP emissions from acrylic and modacrylic fiber production facilities that are area sources of

HAP. The HAP emitted from these facilities is primarily acrylonitrile. The March 26, 2008, amendments made a minor editorial correction to add a phrase that had been omitted from the published rule.

*§113.1450, Carbon Black Production Area Sources (40 Code of Federal Regulations Part 63, Subpart MMMMMM)*

The commission proposes new §113.1450 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart MMMMMM, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard regulates HAP emissions from carbon black production facilities that are area sources of HAP. HAPs emitted from these facilities include polycyclic organic compounds. The March 26, 2008, amendments corrected minor rule citation errors and added a phrase that had been omitted from the published rule.

*§113.1455, Chemical Manufacturing Area Sources: Chromium Compounds (40 Code of Federal Regulations Part 63, Subpart NNNNNN)*

The commission proposes new §113.1455 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart NNNNNN, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard applies to area sources that manufacture chromium compounds. HAPs emitted from these facilities include chromium compounds. The March 26, 2008, amendments corrected control device inspection requirements, and added a phrase that had been omitted from the published rule.

*§113.1460, Flexible Polyurethane Foam Production and Fabrication Area Sources (40 Code of Federal Regulations Part 63, Subpart OOOOOO)*

The commission proposes new §113.1460 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart OOOOOO, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard applies to flexible foam production and flexible foam fabrication plants that are area sources. HAPs emitted from these facilities include methylene chloride. The March 26, 2008, amendments corrected a paragraph formatting error, added language to clarify compliance certification requirements, and revised a table indicating applicable requirements of 40 CFR Part 63 Subpart A.

*§113.1465, Lead Acid Battery Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart PPPPPP)*

The commission proposes new §113.1465 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart PPPPPP, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard applies to lead acid battery manufacturing plants that are area sources. HAPs emitted from these facilities include lead and cadmium compounds. The March 26, 2008, amendments corrected citation errors relating to performance testing requirements, corrected an error in the deadline for submitting compliance status reports, deleted erroneous cross references, and revised a table indicating applicable requirements of 40 CFR Part 63, Subpart A.

*§113.1470, Wood Preserving Area Sources (40 Code of Federal Regulations Part 63, Subpart QQQQQQ)*

The commission proposes new §113.1470 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart QQQQQQ, adopted by the EPA on July 16, 2007 (72 FR 38864), with amendments published on March 26, 2008 (73 FR 15923). This GACT standard applies to wood preserving facilities that are area sources. HAPs emitted from these facilities include arsenic, chromium, methylene chloride, and dioxin. The March 26, 2008, amendments corrected a rule citation, added a phrase that had been inadvertently omitted from the rule text, and corrected a table indicating applicable requirements of 40 CFR Part 63, Subpart A.

*§113.1475, Clay Ceramics Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart RRRRRR)*

The commission proposes new §113.1475 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart RRRRRR, adopted by the EPA on December 26, 2007 (72 FR 73180). This GACT standard applies to clay ceramics manufacturing facilities that are area sources and use more than 50 tons per year of clay. HAPs emitted from these facilities include chromium, lead, manganese, and nickel compounds.

*§113.1480, Glass Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart SSSSSS)*

The commission proposes new §113.1480 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart SSSSSS, adopted by the EPA on December 26, 2007 (72 FR 73180). This GACT standard applies to glass manufacturing facilities that are area sources and that produce 50 tons per year of glass that contains one or more specified HAPs. HAPs emitted from these facilities include arsenic, cadmium, chromium, lead, manganese, and nickel compounds.

*§113.1485, Secondary Nonferrous Metals Processing Area Sources (40 Code of Federal Regulations Part 63, Subpart TTTTTT)*

The commission proposes new §113.1485 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart TTTTTT, adopted by the EPA on December 26, 2007 (72 FR 73180). This GACT standard applies to nonferrous metal processing facilities that are area sources. HAPs emitted from these facilities include arsenic, chromium, lead, manganese, and nickel compounds.

*§113.1495, Chemical Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart VVVVVV)*

The commission proposes new §113.1495 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart VVVVVV, adopted by the EPA on October 29, 2009 (74 FR 56008), with amendments published on December 21, 2012 (77 FR 75740). This GACT standard applies to agricultural chemicals and pesticides manufacturing, cyclic crude and intermediate production, industrial inorganic chemical manufacturing, industrial organic chemical manufacturing, inorganic pigments manufacturing, miscellaneous organic chemical manufacturing, plastic materials and resins manufacturing, pharmaceutical production, and synthetic rubber manufacturing. This standard is limited to area sources. HAPs emitted from these facilities include 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; and compounds of arsenic, cadmium, chromium, lead, manganese, and nickel. The EPA extended the effective date of certain Title V permit requirements (40 CFR §63.11494(e)) on December 14, 2010 (75 FR 77762),

until March 14, 2011. The EPA indefinitely extended the effective date of 40 CFR §63.11494(e) on March 14, 2011 (76 FR 13515).

The EPA published a limited reconsideration of the final rule on January 30, 2012, (77 FR 4522), and published a stay of the October 29, 2009, final rule on October 25, 2012 (77 FR 65136), staying Subpart VVVVVV in its entirety until December 24, 2012. The EPA adopted final reconsideration amendments on December 21, 2012. The December 21, 2012, amendments lifted the stay of the Title V permit requirement issued on March 14, 2011, and lifted the stay of the final rule issued on October 25, 2012. In addition, the December 21, 2012, amendments revised the approach for addressing malfunctions and standards applicable during startup and shutdown periods, and made amendments and technical corrections to the final rule to clarify applicability and compliance issues. The December 21, 2012, amendments also extended the compliance date for existing sources until March 21, 2013.

*§113.1500, Plating and Polishing Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWWW)*

The commission proposes new §113.1500 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart WWWWWW, adopted by the EPA on July 1, 2008 (73 FR 37728), with amendments published on September 19, 2011 (76 FR 57913). This GACT standard applies to metal plating and polishing facilities that are area sources. HAPs emitted from these facilities include cadmium, chromium, lead, manganese, and nickel compounds. The September 19, 2011, amendments clarified that the emission control requirements did not apply to bench-scale activities, and also included minor technical corrections.

*§113.1505, Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXXX)*

The commission proposes new §113.1505 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart XXXXXX, adopted by the EPA on July 23, 2008 (73 FR 42978). This GACT standard applies to a wide range of metal fabrication and finishing operations that are area sources. HAPs emitted from these facilities include cadmium, chromium, lead, manganese, and nickel compounds.

*§113.1510, Ferrous Alloys Production Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYYYY)*

The commission proposes new §113.1510 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart YYYYYY, adopted by the EPA on December 23, 2008 (73 FR 78637). This GACT standard applies to ferrous alloy production facilities that are area sources. HAPs emitted from these facilities include chromium, manganese, and nickel compounds.

*§113.1515, Aluminum, Copper, and Other Nonferrous Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZZZ)*

The commission proposes new §113.1515 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart ZZZZZZ, adopted by the EPA on June 25, 2009 (74 FR 30366), with amendments published on September 10, 2009 (74 FR 46493). This GACT standard applies to area source facilities that pour molten aluminum, copper, or other nonferrous metals into molds to manufacture castings. HAPs emitted from these facilities include chromium, beryllium, cadmium, lead, manganese, and nickel compounds. The September 10, 2009,

amendments clarified applicability requirements and terminology in 40 CFR §63.11544, Am I subject to this subpart?.

**§113.1520, Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart AAAAAAA)**

The commission proposes new §113.1520 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart AAAAAAA, adopted by the EPA on December 2, 2009 (74 FR 63236), with amendments published on March 18, 2010 (75 FR 12988). This GACT standard applies to asphalt processing and asphalt roofing manufacturing operations that are area sources. HAPs emitted from these facilities include polycyclic aromatic hydrocarbons. The March 18, 2010, amendments corrected typographical errors in 40 CFR §63.11563, What are my monitoring requirements?, and corrected cross references in 40 CFR §63.11564, What are my notification, recordkeeping, and reporting requirements?.

**§113.1525, Chemical Preparations Industry Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBB BBB)**

The commission proposes new §113.1525 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart BBBB BBB, adopted by the EPA on December 30, 2009 (74 FR 69194). This GACT standard applies to area source facilities that manufacture chemical preparations containing compounds of chromium, lead, manganese, or nickel, except for manufacturers of certain types of ink. HAPs emitted from these facilities include chromium, lead, manganese, and nickel compounds.

**§113.1530, Paints and Allied Products Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC C)**

The commission proposes new §113.1530 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart CCCCCC C, adopted by the EPA on December 3, 2009 (74 FR 63504), with amendments published on March 5, 2010 (75 FR 10184) and June 3, 2010 (75 FR 31317). This GACT standard applies to area source facilities that manufacture materials such as paint, ink, or adhesive that are intended to be applied to a substrate and consist of a mixture of resins, pigments, solvents, or other additives. HAPs emitted from these facilities include benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel. The March 5, 2010, amendments corrected cross-references and other editorial errors. The June 3, 2010, amendments revised the definition of "material containing hazardous air pollutants" to restore language relating to a *de minimis* concentration of non-carcinogens.

**§113.1535, Prepared Feeds Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDDD)**

The commission proposes new §113.1535 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart DDDDDDD, adopted by the EPA on January 5, 2010 (75 FR 522), with amendments published on July 20, 2010 (75 FR 41991) and December 23, 2011 (76 FR 80261). This GACT standard applies to prepared animal feed manufacturing operations that are area sources. HAPs emitted from these facilities include chromium and manganese compounds. The July 20, 2010, amendments corrected the date for new sources to submit a Notification of Compliance Status form, corrected the information to be included in the Notification of Compliance Report, and restored language relating to submittal of the annual compliance certification report. The December 23, 2011, amendments

revised GACT requirements for pelleting processes at large, existing prepared feeds manufacturing facilities, and associated requirements for compliance demonstration, monitoring, reporting, and recordkeeping. The December 23, 2011, amendments also clarified the requirement that doors be kept closed in areas where materials containing chromium and manganese are present; and clarified the requirement to install a device to minimize emissions at the point of bulk loadout.

**§113.1555, Polyvinyl Chloride and Copolymers Production Major Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHHH)**

The commission proposes new §113.1555 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart HHHHHHH, adopted by the EPA on April 17, 2012 (77 FR 22848). This MACT standard applies to PVC and copolymers production operations that are major sources, or are located at major sources. The primary HAP emitted from these facilities is vinyl chloride.

**Fiscal Note: Costs to State and Local Government**

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules will require the agency to update or issue Title V permits at some emission sources affected by the proposed rules, but the agency does not expect any significant increase in workload and no increase in agency revenue.

The EPA adopted new MACT and GACT standards in 2007 through 2012, and the proposed rules would incorporate these standards by reference in Chapter 113 to ensure that state and federal rules remain consistent. The proposed rules, once adopted, would allow the agency to continue to receive delegation authority from the EPA.

Regulated entities affected by the proposed rules are required to comply with these federal standards whether or not the proposed rules are adopted. The proposed rules are not expected to add additional costs to the regulated community beyond what is already required to comply with the federal standards and requirements. No fees will be charged for any permit changes, including Title V modifications, as a result of the proposed rules.

Units of local government do not typically own or operate the types of facilities that would be required to comply with the proposed rules. If a local government is required to comply with federal MACT and GACT standards, it would not experience any additional compliance or permitting costs under the proposed rules.

**Public Benefits and Costs**

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency between federal and state rules regarding air emissions.

Businesses and individuals are required to comply with these federal standards whether or not the proposed rules are adopted. Any fiscal impacts on regulated entities will result directly from compliance with federal standards. For example, electric arc furnaces, iron and steel foundries, and glass manufacturing facilities are required by the federal MACT and GACT standards to do more testing of controls and recordkeeping. The proposed

rules are not anticipated to add additional costs to the regulated community beyond what is already required to comply with the federal standards, and large businesses would not pay any additional permit fees to comply with the proposed rules.

The following is a partial list of industry groups and facilities, typically owned by large businesses, that could be required to implement the MACT and GACT standards: petroleum refineries; the pulp and paper industry; the polymer and resin industry; the chemical manufacturing industry, shipbuilding, and repair facilities; hazardous waste combustors; the pharmaceutical production industry; the Portland cement manufacturing industry; the semiconductor manufacturing industry; and the PVC and copolymer production industry.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the adoption of federal standards in the proposed rules. A partial list of small business activities that may be required to comply with new MACT and GACT standards are: metal fabrication; metal polishing; surface coating; gasoline dispensing; small foundries; ceramic production; paint manufacturing; glass manufacturing; battery manufacturing; animal feed production; and asphalt roofing production. The proposed rules are not anticipated to add additional costs to the regulated community beyond what is already required to comply with the federal standards. Small businesses would not be required to pay additional permit fees when complying with the proposed rules.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and comply with federal regulations. If the agency does not incorporate the federal standards into the proposed rules, it may not receive delegation authority from the EPA, and small and micro-businesses could be directly regulated by the EPA instead of the commission.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these proposed rules is to adopt amendments to a number of existing NESHAPs incorporated into Chapter 113, adopt incorporations of a number of recently-promulgated NESHAPs not yet incorporated into Chapter 113, and repeal several Chapter

113 sections that reference NESHAPs that are no longer effective due to court actions. The NESHAPs are promulgated by the EPA for source categories mandated by 42 United States Code (USC), §7412 and required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology based standards commonly referred to as MACT standards which EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. As discussed in the Fiscal Note portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal MACT standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including NESHAPs, which are required under 42 USC, §7412. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the National Ambient Air Quality Standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating

or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission in order to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full Regulatory Impact Analysis (RIA) contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements, or repeals of current requirements.

For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) superseded by statute on another point of law, Tax Code §112.108, Other Actions Prohibited, as recognized in, *First State Bank of Dumas v. Sharp*, 863 S.W. 2d 81, 83, (Tex. App. Austin 1993, no writ.); Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).)

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (See Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of §2001.0225.

The proposed rules implement requirements of the FCAA. The NESHAP standards being incorporated into state law are federal technology-based standards that are required by 42 USC, §7412, required to be included in permits under 42 USC, §7661a, proposed to be adopted by reference without modification or substitution, and will not exceed any standard set by state or federal law, or are repeals of existing requirements. These rules are not an express requirement of state law. The proposed rules do not

exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA delegates the NESHAP to Texas in accordance with the delegation procedures codified in 40 CFR Part 63. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017.

Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043. The specific intent of these proposed rules is to adopt amendments to a number of existing NESHAPs incorporated into Chapter 113, adopt incorporations of a number of recently-promulgated NESHAPs not yet incorporated into Chapter 113, and repeal several Chapter 113 sections that reference NESHAPs that are no longer effective due to court actions. The NESHAPs are promulgated by the EPA for source categories mandated by 42 USC, §7412 and required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology based standards commonly referred to as MACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. The proposed rules will not create any additional burden on private real property. Under federal law, the affected industries will be required to

comply with the NESHAPs regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAPs. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under the Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201, *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, Consistency with Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the CMP, and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Advisory Committee and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking action is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l), Goals). The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32, Policies for Emission of Air Pollutants). The proposed rules would incorporate federal regulations concerning emissions of HAPs from certain industries into Chapter 113, allowing the commission to enforce those standards. This would tend to benefit the environment because it would result in lower emissions of HAPs. Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Effect on Sites Subject to the Federal Operating Permits Program

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permits to include the new Chapter 113 requirements. In addition, owners and operators of area sources should be aware that federal rules require certain area source categories to obtain a federal operating permit.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on Thursday, April 11, 2013, at 10:00 a.m., in Building B, Room 201A at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-004-113-AI. The comment period closes on April 15, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Michael Wilhoit, Air Permits Division, Technical Program Support Section, (512) 239-1222.

**30 TAC §§113.100, 113.120, 113.130, 113.180, 113.190, 113.230, 113.240, 113.260, 113.290, 113.300, 113.340, 113.390, 113.400, 113.410, 113.420, 113.560, 113.600, 113.610, 113.620, 113.640, 113.650, 113.670, 113.690, 113.770, 113.790, 113.880, 113.890, 113.1040, 113.1090, 113.1110, 113.1130, 113.1140, 113.1160, 113.1170, 113.1300, 113.1320, 113.1340, 113.1350, 113.1370, 113.1380, 113.1390, 113.1400, 113.1410, 113.1425, 113.1435, 113.1445, 113.1450, 113.1455, 113.1460, 113.1465, 113.1470, 113.1475, 113.1480, 113.1485, 113.1495, 113.1500, 113.1505, 113.1510, 113.1515, 113.1520, 113.1525, 113.1530, 113.1535, 113.1555**

#### Statutory Authority

The amendments and new sections are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The amendments and new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.051,



concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The proposed amendments and new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

*§113.100. General Provisions (40 Code of Federal Regulations Part 63, Subpart A).*

The General Provisions for the National Emission Standards for Hazardous Air Pollutants for Source Categories as specified in 40 Code of Federal Regulations (CFR) Part 63, Subpart A, are incorporated by reference as amended through September 11, 2012 (77 FR 55698) [May 16, 2007 (72 FR 27437)] with the following exceptions.

(1) The language of 40 CFR §63.5(e)(2)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 180 calendar days after receipt of sufficient information to evaluate an application submitted under 40 CFR §63.5(d). The 180-day approval or denial period will begin after the owner or operator has been notified in writing that the [his/her] application is complete. The executive director will notify the owner or operator in writing of the status of the [his/her] application, that is, whether the application contains sufficient information to make a determination, within 90 calendar days after receipt of the original application and within 60 calendar days after receipt of any supplementary information that is submitted.

(2) The language of 40 CFR §63.6(i)(12)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(i) or (i)(5). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the [his/her] application is complete. The executive director will notify the owner or operator in writing of the status of the [his/her] application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(3) The language of 40 CFR §63.6(i)(13)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(ii). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the [his/her] application is complete. The executive director will notify the owner or operator in writing of the status of the [his/her] application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(4) The language of 40 CFR §63.6(i)(13)(ii) is amended to read as follows: When notifying the owner or operator that the [his/her] application is not complete, the executive director will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after they are [he/she is] notified of the incomplete application, additional information, or arguments to the executive director to enable further action on the application.

(5) The language of 40 CFR §63.8(e)(5)(ii) is amended to read as follows: The owner or operator of an affected source using a Continuous Opacity Monitoring System (COMS) to determine opacity compliance during any performance test required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 30 calendar days before the performance test required under §63.7 is conducted.

(6) The language of 40 CFR §63.9(i)(3) is amended to read as follows: If, in the executive director's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the executive director will approve the adjustment. The executive director will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 30 calendar days of receiving sufficient information to evaluate the request.

(7) The language of 40 CFR §63.10(e)(2)(ii) is amended to read as follows: The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under §63.8(e). The copies shall be furnished at least 30 calendar days before the performance test required under §63.7 is conducted.

*§113.120. Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G).*

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart G, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [~~December 21, 2006 (71 FR 76603)~~].

*§113.130. Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H).*

The Organic Hazardous Air Pollutants for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart H, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [~~June 23, 2003 (68 FR 37345)~~].

*§113.180. Perchloroethylene Dry Cleaning Facilities (40 Code of Federal Regulations Part 63, Subpart M).*

The Perchloroethylene Dry Cleaning Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart M, is incorporated by reference as amended through July 11, 2008 (73 FR 39871) [~~September 21, 2006 (71 FR 55280)~~].

*§113.190. Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N).*

The Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart N, is incorporated by reference as amended through September 19, 2012 (77 FR 58220) [~~April 20, 2006 (71 FR 20446)~~].

*§113.230. Gasoline Distribution Facilities (40 Code of Federal Regulations Part 63, Subpart R).*

The Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart R, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [April 6, 2006 (71 FR 17352)].

*§113.240. Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S).*

The Pulp and Paper Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart S, is incorporated by reference as amended through September 11, 2012 (77 FR 55698) [April 13, 2004 (69 FR 19734)].

*§113.260. Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U).*

The Group I Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart U, is incorporated by reference as amended through April 21, 2011 (76 FR 22566) [April 20, 2006 (71 FR 20446)].

*§113.290. Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X).*

The Secondary Lead Smelting Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart X, is incorporated by reference as amended through January 5, 2012 (77 FR 556) [June 23, 2003 (68 FR 37350)].

*§113.300. Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y).*

The Marine Tank Vessel Loading Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart Y, is incorporated by reference as amended through April 21, 2011 (76 FR 22566) [April 20, 2006 (71 FR 20446)].

*§113.340. Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC).*

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CC, is incorporated by reference as amended through June 30, 2010 (75 FR 37730) [June 23, 2003 (68 FR 37351)].

*§113.390. Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH).*

The Oil and Natural Gas Production Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HH, is incorporated by reference as amended through August 16, 2012 (77 FR 49490) [January 3, 2007 (72 FR 26)].

*§113.400. Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II).*

The Shipbuilding and Ship Repair (Surface Coating) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart II, is incorporated by reference as amended through November 21, 2011 (76 FR 72050) [December 29, 2006 (71 FR 78369)].

*§113.410. Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ).*

The Wood Furniture Manufacturing Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJ, is incorporated by reference as amended through November 21, 2011 (76 FR 72050) [June 23, 2003 (68 FR 37353)].

*§113.420. Printing and Publishing (40 Code of Federal Regulations Part 63, Subpart KK).*

The Printing and Publishing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63,

Subpart KK, is incorporated by reference as amended through April 21, 2011 (76 FR 22566) [May 24, 2006 (71 FR 29792)].

*§113.560. Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY).*

The Generic Maximum Achievable Control Technology Standards as specified in 40 Code of Federal Regulations Part 63, Subpart YY, is incorporated by reference as amended through June 29, 2007 (72 FR 35663) [April 20, 2006 (71 FR 20446)].

*§113.600. Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 Code of Federal Regulations Part 63, Subpart CCC).*

The Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCC, is incorporated by reference as amended through September 19, 2012 (77 FR 58220) [April 20, 2006 (71 FR 20446)].

*§113.610. Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD).*

The Mineral Wool Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDD, is incorporated by reference as amended through December 1, 2011 (76 FR 74708) [June 23, 2003 (68 FR 37356)].

*§113.620. Hazardous Waste Combustors (40 Code of Federal Regulations Part 63, Subpart EEE).*

The Hazardous Waste Combustor Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEE, is incorporated by reference as amended through October 28, 2008 (73 FR 64068) [October 25, 2006 (71 FR 62388)].

*§113.640. Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG).*

The Pharmaceuticals Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGG, is incorporated by reference as amended through April 21, 2011 (76 FR 22566) [April 20, 2006 (71 FR 20446)].

*§113.650. Natural Gas Transmission and Storage Facilities (40 Code of Federal Regulations Part 63, Subpart HHH).*

The Natural Gas Transmission and Storage Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHH, is incorporated by reference as amended through August 16, 2012 (77 FR 49490) [April 20, 2006 (71 FR 20446)].

*§113.670. Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ).*

The Group IV Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJ, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [April 20, 2006 (71 FR 20446)].

*§113.690. Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL).*

The Portland Cement Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLL, is incorporated by reference as amended through January 18, 2011 (76 FR 2832) [December 20, 2006 (71 FR 76518)].

*§113.770. Primary Lead Processing [Smelting] (40 Code of Federal Regulations Part 63, Subpart TTT).*

The Primary Lead Processing [Smelting] Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTT, is incorporated by reference as amended

through November 15, 2011 (76 FR 70834) [April 20, 2006 (71 FR 20446)].

§113.790. Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV).

The Publicly Owned Treatment Works Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVV, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [June 23, 2003 (68 FR 37360)].

§113.880. Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE).

The Organic Liquids Distribution (Non-Gasoline) Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEEE, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [July 28, 2006 (71 FR 42898)].

§113.890. Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF).

The Miscellaneous Organic Chemical Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart FFFF, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [July 14, 2006 (71 FR 40316)].

§113.1040. Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU).

The Cellulose Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUU, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [April 20, 2006 (71 FR 20446)].

§113.1090. [Stationary] Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ).

The [Stationary] Reciprocating Internal Combustion Engines Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZ, is incorporated by reference as amended through March 9, 2011 (76 FR 12863) [April 20, 2006 (71 FR 20446)].

§113.1110. Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBB).

The Semiconductor Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBB, is incorporated by reference as amended through July 22, 2008 (73 FR 42529) [April 20, 2006 (71 FR 20446)].

§113.1130. Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDD).

The Industrial, Commercial, and Institutional Boilers and Process Heaters Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDD, is incorporated by reference as amended through March 21, 2011 (76 FR 15608).

§113.1140. Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEE).

The Iron and Steel Foundries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEEE, is incorporated by reference as amended through February 7, 2008 (73 FR 7210) [April 20, 2006 (71 FR 20446)].

§113.1160. Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGG).

The Site Remediation Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart

GGGG, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [November 29, 2006 (71 FR 69011)].

§113.1170. Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHH).

The Miscellaneous Coating Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHH, is incorporated by reference as amended through December 22, 2008 (73 FR 78199) [October 4, 2006 (71 FR 58499)].

§113.1300. Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUU).

The Coal- and Oil-Fired Electric Utility Steam Generating Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUU, is incorporated by reference as amended through April 19, 2012 (77 FR 23399).

§113.1320. Hospital Ethylene Oxide Sterilizers Area Sources (40 Code of Federal Regulations Part 63, Subpart WWW).

The Hospital Ethylene Oxide Sterilizers Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WWW, is incorporated by reference as adopted December 28, 2007 (72 FR 73611).

§113.1340. Electric Arc Furnace Steelmaking Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYY).

The Electric Arc Furnace Steelmaking Facilities Area Sources standard as specified in 40 Code of Federal Regulations Part 63, Subpart YYYY, is incorporated by reference as adopted December 28, 2007 (72 FR 74088).

§113.1350. Iron and Steel Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZ).

The Iron and Steel Foundries Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZ, is incorporated by reference as adopted January 2, 2008 (73 FR 226).

§113.1370. Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBB).

The Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBB, is incorporated by reference as amended through January 24, 2011 (76 FR 4156).

§113.1380. Gasoline Dispensing Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCC).

The Gasoline Dispensing Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as amended through January 24, 2011 (76 FR 4156).

§113.1390. Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD).

The Polyvinyl Chloride and Copolymers Production Area Sources Generally Available [Maximum Achievable] Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDDD, is incorporated by reference as amended through April 17, 2012 (77 FR 22848) [adopted January 23, 2007 (72 FR 2930)].

§113.1400. Primary Copper Smelting Area Sources (40 Code of Federal Regulations Part 63, Subpart EEEEE).

The Primary Copper Smelting Area Sources Generally Available [Maximum Achievable] Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart EEEEE, is

incorporated by reference as amended through July 3, 2007 (72 FR 36363) [adopted January 23, 2007 (72 FR 2930)].

§113.1410. Secondary Copper Smelting Area Sources (40 Code of Federal Regulations Part 63, Subpart FFFFFF).

The Secondary Copper Smelting Area Sources Generally Available Control Technology [Maximum Achievable Control Technology] standard as specified in 40 Code of Federal Regulations Part 63, Subpart FFFFFF, is incorporated by reference as amended through July 3, 2007 (72 FR 36363) [adopted January 23, 2007 (72 FR 2930)].

§113.1425. Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 Code of Federal Regulations Part 63, Subpart HH-HHHH).

The Paint Stripping and Miscellaneous Surface Coating at Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHHHH, is incorporated by reference as amended through February 13, 2008 (73 FR 8408).

§113.1435. Industrial, Commercial, and Institutional Boilers Area Sources (40 Code of Federal Regulations Part 63, Subpart JJJJJJ).

The Industrial, Commercial, and Institutional Boilers Area Sources standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJJJJ, is incorporated by reference as adopted March 21, 2011 (76 FR 15554).

§113.1445. Acrylic and Modacrylic Fibers Area Sources (40 Code of Federal Regulations Part 63, Subpart LLLLLL).

The Acrylic and Modacrylic Fibers Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLLLLL, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1450. Carbon Black Production Area Sources (40 Code of Federal Regulations Part 63, Subpart MMMMMM).

The Carbon Black Production Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMMMMM, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1455. Chemical Manufacturing Area Sources: Chromium Compounds (40 Code of Federal Regulations Part 63, Subpart NNNNNN).

The Chemical Manufacturing Area Sources: Chromium Compounds Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNNNNN, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1460. Flexible Polyurethane Foam Production and Fabrication Area Sources (40 Code of Federal Regulations Part 63, Subpart OOOOOO).

The Flexible Polyurethane Foam Production and Fabrication Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOOOOO, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1465. Lead Acid Battery Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart PPPPPP).

The Lead Acid Battery Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPPPPP, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1470. Wood Preserving Area Sources (40 Code of Federal Regulations Part 63, Subpart QQQQQQ).

The Wood Preserving Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63,

Subpart QQQQQQ, is incorporated by reference as amended through March 26, 2008 (73 FR 15923).

§113.1475. Clay Ceramics Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart RRRRRR).

The Clay Ceramics Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRRRRR, is incorporated by reference as adopted December 26, 2007 (72 FR 73180).

§113.1480. Glass Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart SSSSSS).

The Glass Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart SSSSSS, is incorporated by reference as adopted December 26, 2007 (72 FR 73180).

§113.1485. Secondary Nonferrous Metals Processing Area Sources (40 Code of Federal Regulations Part 63, Subpart TTTTTT).

The Secondary Nonferrous Metals Processing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart TTTTTT, is incorporated by reference as adopted December 26, 2007 (72 FR 73180).

§113.1495. Chemical Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart VVVVVV).

The Chemical Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart VVVVVV, is incorporated by reference as amended through December 21, 2012 (77 FR 75740).

§113.1500. Plating and Polishing Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWWW).

The Plating and Polishing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart WWWWWW, is incorporated by reference as amended through September 19, 2011 (76 FR 57913).

§113.1505. Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXXX).

The Metal Fabrication and Finishing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXXXXX, is incorporated by reference as adopted July 23, 2008 (73 FR 42978).

§113.1510. Ferroalloys Production Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYYYY).

The Ferroalloys Production Facilities Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart YYYYYY, is incorporated by reference as adopted December 23, 2008 (73 FR 78637).

§113.1515. Aluminum, Copper, and Other Nonferrous Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZZZ).

The Aluminum, Copper, and Other Nonferrous Foundries Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZZZ, is incorporated by reference as amended through September 10, 2009 (74 FR 46493).

§113.1520. Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart AAAAAA).

The Asphalt Processing and Asphalt Roofing Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AAAAAA, is incorporated by reference as amended through March 18, 2010 (75 FR 12988).

§113.1525. Chemical Preparations Industry Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBBBBB).

The Chemical Preparations Industry Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BBBBBBB, is incorporated by reference as adopted December 30, 2009 (74 FR 69194).

§113.1530. Paints and Allied Products Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC).

The Paints and Allied Products Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCCCC, is incorporated by reference as amended through June 3, 2010 (75 FR 31317).

§113.1535. Prepared Feeds Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDDD).

The Prepared Feeds Manufacturing Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDDDDD, is incorporated by reference as amended through December 23, 2011 (76 FR 80261).

§113.1555. Polyvinyl Chloride and Copolymers Production Major Sources (40 Code of Federal Regulations Part 63, Subpart HHHH-HHH).

The Polyvinyl Chloride and Copolymers Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart HHHHHHH, is incorporated by reference as adopted April 17, 2012 (77 FR 22848).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300940

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 239-0779



### 30 TAC §§113.150, 113.1190, 113.1200

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a

general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The repeal implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.150. Polyvinyl Chloride and Copolymers Production (40 CFR 63, Subpart J).

§113.1190. Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ).

§113.1200. Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300939

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 239-0779



## CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§290.42, 290.44, and 290.109.

#### Background and Summary of the Factual Basis for the Proposed Rules

The purpose of the proposed amendments is to reflect changes to the Texas Health and Safety Code (THSC), §341.042, made during the 82nd Legislature, 2011, in House Bill (HB) 3372, §3 of HB 3391, and Senate Bill (SB) 1073. These changes relate to rainwater harvesting systems (RWHS) that are connected to a public water system (PWS) and are intended for indoor potable use (affected RWHS).

HB 3372, §3 of HB 3391, and SB 1073 amend THSC, §341.042, Standards for Harvested Rainwater, by requiring the commission to amend the existing rules for structures that are connected to a PWS and have a RWHS by allowing these systems to be used for indoor potable purposes. HB 3372, §3 of HB 3391, and SB 1073 amend THSC, §341.042, by adding requirements: for the commission to coordinate with the Texas Department of State Health Services (TDSHS) to develop rules, including safe drinking water standards and provisions for cross-connection protection for the installation and maintenance of affected RWHS; that the installation of affected RWHSs must be done by a master plumber or a journeyman plumber with a Water Supply Protection Specialist endorsement; and that a person who intends to connect an affected RWHS to a PWS for potable purposes must give written notice to, and receive consent from, the municipality or the owner or operator of the PWS prior to installation. As directed by the legislation, the executive director's staff worked

with TDSHS to develop proposed rules regarding the installation and maintenance of affected RWHSs.

HB 3372, §3 of HB 3391, and SB 1073 direct the commission to develop rules regarding the installation and maintenance of RWHSs that are used for indoor potable purposes and are connected to a PWS. The bills stipulate that the rules must contain criteria that are sufficient to ensure that safe sanitary drinking water standards are met; however, the bills are silent on the specific measures to be included in these standards. The executive director's staff proposes to fulfill this directive by adding minimum criteria in the rules and publishing more specific recommendations in a guidance document containing criteria the PWSs may choose to implement with their customers.

#### Section by Section Discussion

In addition to implementation of the state laws discussed previously, the commission proposes administrative changes throughout the proposed rules to reflect the agency's existing practices, conform with *Texas Register* and agency guidelines, and correct typographical and grammatical errors.

#### §290.42, *Water Treatment*

The commission proposes to amend §290.42(c)(1) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, to include rainwater in the list of sources that require evaluation for the provision of treatment facilities.

#### §290.44, *Water Distribution*

The commission proposes to amend §290.44(a)(2) and (i)(2)(K) to define two acronyms in their first use within the rule. The commission proposes to amend §290.44(h) and its subdivisions to reflect that the commission now issues a license, rather than a certificate, to persons who pass an exam to become a backflow prevention assembly tester. The commission proposes to add §290.44(h)(1)(C) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, to ensure that safe sanitary drinking water standards are met by adding the requirement that at each residence or facility where water from a RWHS is used for indoor potable purposes, and there is a connection to a PWS, the PWS must ensure that the make-up supply line to the rainwater storage tank is provided with an air-gap that has been inspected and approved upon installation by a licensed backflow prevention assembly tester. The commission proposes to amend §290.44(h)(4)(B) to update a reference to an American Water Works Association publication. The commission proposes to amend §290.44(j) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, by removing the requirement that the RWHS may only be used for nonpotable indoor purposes. The commission proposes to add §290.44(j)(1) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, by adding the requirement that a person who intends to connect an affected RWHS to a PWS for potable purposes must give written notice to, and receive consent from, the municipality or the owner or operator of the PWS prior to installation. The commission proposes to add §290.44(j)(2) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, to add the requirement that at each residence or facility where water from a RWHS is used for indoor potable purposes and where there is a connection to a PWS, the PWS must ensure that the RWHS is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement as a Water Supply Protection Specialist, issued by the Texas State Board of Plumbing Examin-

ers. The proposal requires municipalities or owners/operators of a PWS consenting to the installation of this type of RWHS to assume the responsibility for ensuring that safe sanitary drinking water standards are met. The commission proposes to add §290.44(j)(3) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, to require that at each residence or facility where water from a RWHS is used for indoor potable purposes, and where there is a connection to a PWS, the PWS shall ensure that minimum treatment consists of filtration and disinfection. The guidance document will discuss filtration and treatment options, but the PWS will be able to implement more stringent requirements. The proposed rules require municipalities or owners/operators of a PWS consenting to the installation of this type of RWHS to assume the responsibility for ensuring that safe sanitary drinking water standards are met. The commission proposes to add §290.44(j)(4), to implement THSC, §341.042, as amended by HB 3372 and §3 of HB 3391 to allow PWSs to require that at each residence or facility where water from a RWHS is used for indoor potable purposes and where there is a connection to a PWS, the PWS may require additional levels of treatment.

#### §290.109, *Microbial Contaminants*

The commission proposes to amend §290.109(b)(1)(C) to define an acronym in its first use within the rule. The commission proposes to amend §290.109(f)(4) to correct a typographical reference error by amending "§209.122(a)" to "§290.122(a)". The commission proposes to add §290.109(h) to implement THSC, §341.042, as amended by HB 3372, §3 of HB 3391, and SB 1073, to ensure that safe sanitary drinking water standards are met by requiring the PWS to ensure that the microbiological quality of the treated rainwater is monitored at least annually and to clarify that the PWS has the authority to require additional levels of treatment at each residence or facility where water from a RWHS is used for indoor potable purposes and where there is a connection to a PWS.

#### Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would amend Chapter 290 to implement the provisions of HB 3372, §3 of HB 3391, and SB 1073 to provide the option of using water collected by a RWHS for indoor potable use where a structure is connected to a PWS. The proposed rules would not change existing requirements for RWHSs used to provide water for nonpotable purposes. There are approximately 6,954 PWSs in the state.

The proposed rules remove the current requirement that water from a RWHS be used only for nonpotable purposes when connected to a PWS. The proposed rules require a person or other entity choosing to install this type of RWHS to provide notice to, and receive consent from, the affected municipality or owner/operator of a PWS prior to installing such a system. Because the proposed rules require a PWS to assume the responsibility of ensuring that safe sanitary drinking water standards are met, a PWS would also impose additional obligations on persons or entities installing this type of system. These additional requirements would include: using licensed master plumbers or journeyman plumbers with a Water Supply Protection Specialist en-

dorsement from the Texas State Board of Plumbing Examiners; using backflow protection at the water service entrance; treating collected rainwater used for potable purposes; performing annual monitoring for microbiological quality; and complying with any additional requirements imposed by a PWS.

The proposed rules require municipalities or owner/operators of a PWS consenting to the installation of these types of RWHSs to assume the responsibility for ensuring that safe sanitary drinking water standards are met. Requirements for these PWSs include: ensuring that minimum rainwater treatment consists of filtration and disinfection; ensuring that the make-up supply line to a rainwater storage tank is provided with an air-gap inspected and approved by a licensed backflow prevention assembly tester; ensuring that installation of these types of RWHSs is done by licensed master plumbers or journeyman plumbers with a Water Supply Protection Specialist endorsement from the Texas State Board of Plumbing Examiners; and ensuring that the microbiological quality of treated rainwater from these types of systems is monitored at least annually. The proposed rules allow a PWS or municipality to require additional levels of treatment beyond minimum filtration and disinfection.

There are approximately 2,351 PWSs in the state, owned or operated by local governments. The proposed rules would not require the agency to track which of these PWSs would allow installation of RWHSs.

A PWS, owned or operated by a local government, that consents to allow the installation of these types of RWHSs could incur some revenue loss or additional costs for administration if the number of installations increases substantially above current levels of installation. However, the fiscal impact of the proposed rules on local government is expected to be minimal for several reasons. A PWS has the option to disallow the installation of this type of RWHS. Also, the number of individuals choosing to install these types of RWHSs is expected to be small. In addition, a PWS is already required by current rules to require cross-connection controls. If a PWS, owned or operated by a local government, chooses to grant permission for the installation of such RWHSs, the PWS is expected to require individuals or businesses owning the RWHS to assume the financial burden of meeting proposed rule requirements and any other optional treatment methods required. At this time, the agency cannot estimate the number of local governments, owning or operating PWSs, that might allow the installation of these types of RWHSs.

#### Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the allowance of additional methods to conserve water and the promotion of water conservation in the state.

The agency estimates that there are approximately 4,603 PWSs in the state, that are owned or operated by individuals or businesses. The proposed rules would not require the agency to track which of these PWSs would allow installation of RWHSs.

The proposed rules are not expected to have a significant fiscal impact on individuals, since individuals can choose to incur the expense of installing and maintaining a RWHS and comply with PWS requirements when rainwater collection is for indoor potable use and is connected to a PWS. Individuals are expected to install such a system only if they decide it is economically beneficial for them or if the installation and use of such a RWHS

promotes water conservation and reflects their personal environmental philosophy.

RWHSs vary widely in cost and sophistication, and individuals are expected to choose a system that best fits their needs. If an individual already has a RWHS installed and connected to a PWS, the additional cost to filter and disinfect the water for indoor potable use could be less than \$100 for a chlorinator and bleach or several thousand dollars for an ultraviolet light system. Individuals would also incur the costs of using the appropriate licensed personnel for installation and any other costs to comply with a PWS's water treatment, testing, and monitoring requirements. These costs vary widely across the state depending on local market conditions, additional controls required by each PWS, and the size and design of each system. The cost to hire a licensed master plumber or journeyman plumber, with the required Water Supply Protection Specialist endorsement, could be greater than the cost of hiring a licensed irrigator, landscape designer, or rainwater harvesting equipment owner who are allowed to install RWHSs for nonpotable use under current rules. Individuals choosing to install RWHSs for potable use could purchase less water from a PWS, assuming there is sufficient rainfall, but any fiscal advantages of using this type of RWHS would depend on a variety of factors, such as the type and cost of the RWHS installed, individual water use patterns, and the cost of purchasing potable water from the PWS.

The proposed rules are not expected to have a significant fiscal impact on businesses. Businesses that choose to install this type of RWHS are expected to do so only if they decide it is economically beneficial for them or if the installation and use of such a RWHS reflects their environmental philosophy and desire to promote water conservation.

Businesses that own or operate PWSs are also not expected to experience significant fiscal impacts under the proposed rules because they would have the same options and flexibility afforded to PWSs owned or operated by a local government. Also, the number of businesses that choose to install this type of RWHS is expected to be small.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for some small or micro-businesses as a result of the proposed rules; however, there are 36 listed member businesses of the Texas Rainwater Catchment Association that are known to install RWHSs. If any of these 36 businesses wanted to install systems for potable use, they would have to incur the additional expense of obtaining the proper licensure or contract for a licensed master plumber or journeyman plumber with a Water Supply Protection Specialist endorsement from the Texas State Board of Plumbing Examiners. According to the Bureau of Labor Statistics, the average hourly wage for plumbers, pipefitters, and steamfitters in Texas for 2011 was about \$25 per hour, but this cost varies widely across the state. Licensure costs for a master plumber include \$175 for the exam and \$246 per year for a license. There would be additional costs to attend continuing education classes and obtain the Water Supply Protection Specialist endorsement.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small businesses and are required to protect the public health and comply with state law.

## Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

## Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 3372, §3 of HB 3391, and SB 1073, which establish requirements for a structure with a RWHS intended for indoor potable use, which is connected to a PWS. All three bills also contain language that states that a municipally owned water or wastewater utility, a municipality, or the owner or operator of a PWS, may not be held liable for any alleged adverse health effects caused by drinking water from an affected RWHS if the PWS complies with applicable sanitary standards.

HB 3372 and SB 1073 also require the following: TCEQ shall coordinate with TDSHS to develop rules, including safe drinking water standards and provisions for cross-connection protection, for the installation and maintenance of affected RWHSs; the installation of affected RWHS must be done by a master plumber or a journeyman plumber that holds a Water Supply Protection Specialist endorsement; and, any person who intends to connect an affected RWHS to a PWS must give written notice to the municipality or the owner or operator of the PWS prior to installation. Section 3 of HB 3391 also requires the following: the commission shall develop rules, including safe drinking water standards and provisions for cross-connection protection, for the installation and maintenance of affected RWHSs; and any person who intends to connect an affected RWHS to a PWS must provide written notice to, and receive the consent, of the municipality or the owner or operator of the PWS prior to installation.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing RWHSs connected to a PWS in Texas. Second, the proposed rulemaking does not exceed an express requirement of state law.

Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is not proposed solely under the general powers of the agency, but specifically under THSC, §341.042, which allows the commission to adopt and enforce rules related to harvested rainwater.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

## Takings Impact Assessment

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by HB 3372, §3 of HB 3391, and SB 1073, which establish requirements for a structure with a RWHS intended for indoor portable use, which is connected to a PWS. These bills also provide for immunity from liability for a municipally owned water or wastewater utility, a municipality, or the owner or operator of a PWS for any alleged adverse health effects caused by drinking water from an affected RWHS if the PWS complies with applicable sanitary standards. These bills also require the following: TCEQ must coordinate with the TDSHS to develop rules, including safe drinking water standards and provisions for cross-connection protection, for the installation and maintenance of affected RWHSs; the installation of affected RWHSs must be done by a master plumber or a journeyman plumber that holds a Water Supply Protection Specialist endorsement; and any person who intends to connect an affected RWHS to a PWS must give written notice to and receive consent of the municipality or the owner or operator of the PWS prior to installation. This proposed rulemaking would substantially advance these purposes by amending Chapter 290 to incorporate the statutory requirements.

Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This proposed rulemaking will primarily affect those persons who wish to connect a RWHS, intended for indoor potable purposes, to a PWS; this would not be an effect on real property. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

## Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

## Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on April 9, 2013, at 10:00 a.m. in Building E, Room 201



S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-057-290-OW. The comment period closes April 15, 2013. Copies of the proposed rule-making can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Cindy Haynie, Water Supply Division, Plan and Technical Review Section, (512) 239-3465.

## SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

### 30 TAC §290.42, §290.44

#### Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amend §290.42 and §290.44, which relate to rainwater harvesting systems (RWHS) that are connected to a public water system (PWS) and are intended for indoor potable use.

The proposed amendments implement the language set forth in House Bill (HB) 3372; §3 of HB 3391; and Senate Bill 1073, which require the commission to amend the existing rules for structures that are connected to a PWS and have a RWHS by allowing a RWHS to be used for indoor potable purposes.

#### §290.42. *Water Treatment.*

##### (a) Capacity and location.

(1) Based on current acceptable design standards, the total capacity of the public water system's treatment facilities must always be greater than its anticipated maximum daily demand.

(2) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the groundwater water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage ef-

fluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage unit shall be constructed of ductile iron or polyvinyl chloride (PVC) pipe with a minimum pressure rating of 150 pounds per square inch (psi) and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes, including both liquid and solid wastes, [waste] or by-product material from operation and/or maintenance.

(3) Each water treatment plant shall be located at a site that is accessible by an all-weather road.

##### (b) Groundwater.

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section.

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(11) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that these metals can be sequestered so that the discoloration problems they cause do not exist in the distribution system.

(C) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(3) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(4) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(5) All plant piping shall be constructed to minimize leakage.

(6) All groundwater systems shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(7) Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(8) The executive director may require 4-log removal or inactivation of viruses based on raw water sampling results required

by §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate [an] impermeable strata, rainwater, or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title (relating to Surface Water Treatment).

(A) Filters provided for turbidity and microbiological quality control shall conform to the requirements of subsection (d)(11) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as for checking the effectiveness of disinfection or any other treatment processes employed.

(4) All plant piping shall be constructed to minimize leakage. No cross-connection or interconnection shall be permitted to exist between a conduit carrying potable water and another conduit carrying raw water or water in a prior stage of treatment.

(5) All systems using springs and other water sources shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(6) Return of the decanted water or sludge to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process and shall conform to the applicable requirements of subsection (d)(3) of this section. Systems that do not comply with the provisions of subsection (d)(3) of this section commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(7) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title.

(2) All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

(A) Vacuum breakers must be provided on each hose bibb within the plant facility.

(B) No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(C) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(D) Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clearwells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(E) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(F) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(3) Return of the decanted water or solids to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process. Systems that do not comply with the provisions of this paragraph commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title.

(A) Unless the executive director has approved an alternate recycling location, spent backwash water and the liquids from sludge settling lagoons, spent backwash water tanks, sludge thickeners, and similar dewatering facilities shall be returned to the raw waterline upstream of the raw water sample tap and coagulant feed point. The blended recycled liquids shall pass through all of the major unit processes at the plant.

(B) Recycle facilities shall be designed to minimize the magnitude and impact of hydraulic surges that occur during the recycling process.

(C) Solids produced by dewatering facilities such as sludge lagoons, sludge thickeners, centrifuges, mechanical presses, and similar devices shall not be returned to the treatment plant without the prior approval of the executive director.

(4) Reservoirs for pretreatment or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidities or other abnormal raw water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Flow measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(6) Chemical storage facilities shall comply with applicable requirements in subsection (f)(1) of this section.

(7) Chemical feed facilities shall comply with the applicable requirements in subsection (f)(2) of this section.

(8) Flash mixing equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least one hydraulic mixing unit or at least two sets of mechanical flash mixing equipment designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant mechanical flash mixing equipment.

(B) Flash mixing equipment shall have sufficient flexibility to ensure adequate dispersion and mixing of coagulants and other chemicals under varying raw water characteristics and raw water flow rates.

(9) Flocculation equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sets of flocculation equipment which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant flocculation equipment.

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and up-flow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000, are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 nephelometric turbidity unit (NTU) and the treatment plant meets with turbidity requirements of §290.111 of this title.

(ii) The mixing intensity in multiple-stage flocculators shall decrease as the coagulated water passes from one stage to the next.

(C) Coagulated water or water from flocculators shall flow to sedimentation basins in such a manner as to prevent destruction of floc. Piping, flumes, and troughs shall be designed to provide a flow velocity of 0.5 to 1.5 feet per second. Gates, ports, and valves shall be designed at a maximum flow velocity of 4.0 feet per second in the transfer of water between units.

(10) Clarification facilities shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sedimentation basins or clarification units which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant sedimentation basins or clarification units.

(B) The inlet and outlet of clarification facilities shall be designed to prevent short-circuiting of flow or the destruction of floc.

(C) Clarification facilities shall be designed to remove flocculated particles effectively.

(i) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of coagulated waters shall provide either a theoretical detention time of at least six hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 0.6 gallons per minute per square foot of surface area in the sedimentation chamber.

(ii) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of softened waters shall provide either a theoretical detention time of at least 4.5 hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot of surface area in the sedimentation chamber.

(iii) When operated at their design capacity, sludge-blanket and solids-recirculation clarifiers shall provide either a theoretical detention time of at least two hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot in the settling chamber.

(iv) A side wall water depth of at least 12 feet shall be provided in clarification basins that are not equipped with mechanical sludge removal facilities.

(v) The effective length of a straight-flow sedimentation basin shall be at least twice its effective width.

(D) Clarification facilities shall be designed to prevent the accumulation of settled solids.

(i) At treatment plants with a single clarification basin, facilities shall be provided to drain the basin within six hours. In the event that the plant site topography is such that gravity draining cannot be realized, a permanently installed electric-powered pump station shall be provided to dewater the basin. Public water systems with other potable water sources that can meet the system's average daily demand are exempt from this requirement.

(ii) Facilities for sludge removal shall be provided by mechanical means or by hopper-bottomed basins with valves capable of complete draining of the units.

(11) Gravity or pressure type filters shall be provided.

(A) The use of pressure filters shall be limited to installations with a treatment capacity of less than 0.50 million gallons per day.

(B) Filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times.

(i) The design capacity of gravity rapid sand filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 3.0 gallons per square foot per minute is allowed.

(ii) Where high-rate gravity filters are used, the design capacity shall not exceed a maximum filtration rate of 5.0 gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 6.5 gallons per square foot per minute is allowed.

(iii) The design capacity of pressure filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute with the largest filter off-line

(iv) Except as provided in clause (vi) of this subparagraph, any surface water treatment plant that provides, or is being designed to provide, less than 7.5 million gallons per day must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with all filters on-line.

(v) Any surface water treatment plant that provides, or is being designed to provide, 7.5 million gallons per day or more must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(vi) Any surface water treatment plant that uses pressure filters must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(C) The depth and condition of the media and support material shall be sufficient to provide effective filtration.

(i) The filtering material shall conform to American Water Works Association (AWWA) standards and be free from clay, dirt, organic matter, and other impurities.

(ii) The grain size distribution of the filtering material shall be as prescribed by AWWA standards.

(iii) The depth of filter sand, anthracite, granular activated carbon, or other filtering materials shall be 24 inches or greater and provide an L/d ratio of at least 1,000.

(I) Rapid sand filters typically contain a minimum of eight inches of fine sand with an effective size of 0.35 to 0.45 millimeter (mm), eight inches of medium sand with an effective size of 0.45 to 0.55 mm, and eight inches of coarse sand with an effective size of 0.55 to 0.65 mm. The uniformity coefficient of each size range should not exceed 1.6.

(II) High-rate dual media filters typically contain a minimum of 12 inches of sand with an effective size of 0.45 to 0.55 mm and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each material should not exceed 1.6.

(III) High-rate multi-media filters typically contain a minimum of three inches of garnet media with an effective size of 0.2 to 0.3 mm, nine inches of sand with an effective size of 0.5 to 0.6 mm, and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each size range should not exceed 1.6.

(IV) High-rate mono-media anthracite or granular activated carbon filters typically contain a minimum of 48 inches of anthracite or granular activated carbon with an effective size of 1.0 to 1.2 mm. The uniformity coefficient of each size range should not exceed 1.6.

(iv) Under the filtering material, at least 12 inches of support gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that

each layer contains material about twice the size of the material above it. Other support material may be approved on an individual basis.

(D) The filter shall be provided with facilities to regulate the filtration rate.

(i) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

(ii) Each declining rate filter shall be equipped with a rate-of-flow limiting device or an adjustable flow control valve with a rate-of-flow indicator.

(iii) The effluent line of each filter installed after January 1, 1996, must be equipped with a slow opening valve or another means of automatically preventing flow surges when the filter begins operation.

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed to provide the ability to measure and record turbidity as required by §290.111 of this title.

(i) Each filter shall be equipped with a sampling tap so that the effluent turbidity of the filter can be individually monitored.

(ii) Each filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals. The executive director may allow combined filter effluent monitoring in lieu of individual filter effluent monitoring under the following conditions:

(I) The public water system has only two filters that were installed prior to October 1, 2000, and were never equipped with individual on-line turbidimeters and recorders; and

(II) The plant is equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity level of the combined filter effluent at a location prior to clearwell storage at 15-minute intervals.

(iii) Each filter operated by a public water system that serves at least 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals.

(iv) Each filter installed after October 1, 2000, shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(v) Each filter unit that is not equipped with an on-line turbidimeter and recorder shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators.

(F) Filters shall be designed to ensure adequate cleaning during the backwash cycle.

(i) Only filtered water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks, by the effluent of other filters, or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by a rate-of-flow controller or flow control valve.

(iii) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 gallons per minute per square foot) and usually not more than 35 inches vertical rise per minute (21.8 gallons per minute per square foot).

(iv) The backwash facilities shall be capable of expanding the filtering bed during the backwash cycle.

(I) For facilities equipped with air scour, the backwash facilities shall be capable of expanding the filtering bed at least 15% during the backwash cycle.

(II) For mixed-media filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 25% during the backwash cycle.

(III) For mono-media sand filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 40% during the backwash cycle.

(v) The filter freeboard in inches shall exceed the wash rate in inches of vertical rise per minute.

(vi) When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow assembly in the supply line. If an atmospheric vacuum breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

(vii) Gravity filters installed after January 1, 1996 shall be equipped with air scour backwash or surface wash facilities.

(G) Each filter installed after October 1, 2000<sub>2</sub> shall be equipped with facilities that allow the filter to be completely drained without removing other filters from service.

(12) Pipe galleries shall provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(13) The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals.

(A) A plant that is built or repainted after October 1, 2000<sub>2</sub> must use the following color code. The color code to be used in labeling pipes is as follows:

Figure: 30 TAC §290.42(d)(13)(A) (No change.)

(B) A plant that was repainted before October 1, 2000<sub>2</sub> may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

(C) The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

(14) All surface water treatment plants shall provide sampling taps for raw, settled, individual filter effluent, and clearwell discharge. Additional sampling taps shall be provided as appropriate to monitor specific treatment processes.

(15) An adequately equipped laboratory shall be available locally so that daily microbiological and chemical tests can be conducted.

(A) For plants serving 25,000 persons or more, the local laboratory used to conduct the required daily microbiological analyses

must be accredited by the executive director to conduct coliform analyses.

(B) For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted if the required microbiological samples can be submitted to a laboratory accredited by the executive director on a timely basis.

(C) All surface water treatment plants shall be provided with equipment for making at least the following determinations:

(i) pH;

(ii) temperature;

(iii) disinfectant residual;

(iv) alkalinity;

(v) turbidity;

(vi) jar tests for determining the optimum coagulant dose; and

(vii) other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes.

(D) An amperometric titrator with platinum-platinum electrodes shall be provided at all surface water treatment plants that use chlorine dioxide.

(E) Each surface water treatment plant that uses sludge-blanket clarifiers shall be equipped with facilities to monitor the depth of the sludge blanket.

(F) Each surface water treatment plant that uses solids-recirculation clarifiers shall be equipped with facilities to monitor the solids concentration in the slurry.

(16) Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff during routine and special investigations.

(e) Disinfection.

(1) All water obtained from surface sources or groundwater sources that are under the direct influence of surface water must be disinfected in a manner consistent with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) All groundwater must be disinfected prior to distribution. The point of application must be ahead of the water storage tank(s) if storage is provided prior to distribution. Permission to use alternate disinfectant application points must be obtained in writing from the executive director.

(3) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the flow rate of the water being treated shall be provided at plants

where the treatment rate varies automatically and at all plants where the treatment rate varies more than 50% above or below the average flow. Manual control shall be permissible at surface water treatment plants or plants treating groundwater under the direct influence of surface water only if an operator is always on hand to make adjustments promptly.

(C) All disinfecting equipment in surface water treatment plants shall include at least one functional standby unit of each capacity for ensuring uninterrupted operation. Common standby units are permissible but, generally, more than one standby unit must be provided because of the differences in feed rates or the physical state in which the disinfectants are being fed (solid, liquid, or gas).

(D) Facilities shall be provided for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only a clear supernatant liquid is transferred to the hypochlorinator container.

(F) Provisions shall be made for both pretreatment disinfection and post-disinfection in all surface water treatment plants. Additional application points shall be installed if they are required to adequately control the quality of the treated water.

(G) The use of disinfectants other than chlorine will be considered on a case-by-case basis under the exception guidelines of §290.39(1) of this title (relating to General Provisions).

(4) Systems that use chlorine gas must ensure that the risks associated with its use are limited as follows.

(A) When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency.

(B) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandalism.

(C) Adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC).

(5) Hypochlorination solution containers and pumps must be housed in a secure enclosure to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered to prevent the entrance of dust, insects, and other contaminants.

(6) Where anhydrous ammonia feed equipment is utilized, it must be housed in a separate enclosure equipped with both high and low level ventilation to the outside atmosphere. The enclosure must

be provided with forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the floor vent and discharges through the top vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current IFC.

(f) Surface water treatment plant chemical storage and feed facilities.

(1) Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping.

(A) Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level (MCL) requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability.

(B) Day tanks shall be provided to minimize the possibility of severely overfeeding liquid chemicals. Day tanks will not be required if adequate process control instrumentation and procedures are employed to prevent chemical overfeed incidents.

(C) Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank.

(D) Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

(E) Bulk storage facilities and day tanks must be designed to minimize the possibility of leaks and spills.

(i) The materials used to construct bulk storage and day tanks must be compatible with the chemicals being stored and resistant to corrosion.

(ii) Except as provided in this clause, adequate containment facilities shall be provided for all liquid chemical storage tanks.

(I) Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(II) Common containment for multiple containers that are not interconnected must be large enough to hold the volume of the largest container with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(III) The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(IV) Incompatible chemicals shall not be stored within the same containment structure.

(V) No containment facilities are required for hypochlorite solution containers that have a capacity of 35 gallons or less.

(VI) On a site-specific basis, the executive director may approve the use of double-walled tanks in lieu of separate containment facilities.

(F) Chemical transfer pumps and control systems must be designed to minimize the possibility of leaks and spills.

(G) Piping, pumps, and valves used for chemical storage and transfer must be compatible with the chemical being fed.

(2) Chemical feed and metering facilities shall be designed so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality.

(A) Each chemical feeder that is needed to comply with a treatment technique or MCL requirement shall have a standby or reserve unit. Common standby feeders are permissible, but generally, more than one standby feeder must be provided due to the incompatibility of chemicals or the state in which they are being fed (solid, liquid, or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection.

(g) Other treatment processes. Innovative/alternate treatment processes will be considered on an individual basis, in accordance with §290.39(l) of this title. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require a pilot study protocol to be submitted for review and approval prior to conducting a pilot study to verify compli-

ance with the requirements of §290.39(l) of this title and Subchapter F of this chapter. The executive director may require proof of a one-year manufacturer's performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(1) Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.

(2) Bag and cartridge filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive up to 3.0-log *Giardia* removal credit, up to 2.0-log *Cryptosporidium* removal credit for individual bag or cartridge filters, and up to 2.5-log *Cryptosporidium* removal credit for bag or cartridge filters operated in series only if the cartridges or bags meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) The filter system must treat the entire plant flow.

(B) To be eligible for this credit, systems must receive approval from the executive director based on the results of challenge testing that is conducted according to the criteria established by 40 Code of Federal Regulations (CFR) §141.719 (a) and the executive director.

(i) A factor of safety equal to 1.0-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium* and *Giardia*.

(iii) Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iv) Systems may use results from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(v) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, additional challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and results submitted to the executive director for approval.

(C) Pilot studies must be conducted using filters that will meet the requirements of this section.

(3) Membrane filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit for membrane filtration only if the systems or modules meet the criteria in subparagraphs (A) - (F) of this paragraph.

(A) The membrane module used by the system must undergo challenge testing to evaluate removal efficiency. Challenge testing must be conducted according to the criteria established by 40 CFR §141.719(b)(2) and the executive director.

(i) All membrane module challenge test protocols and results, the protocol for calculating the representative Log Removal Value (LRV) for each membrane module, the removal efficiency, calculated results of LRVC-Test, and the non-destructive performance test with its Quality Control Release Value (QCRV) must be submitted to the executive director for review and approval prior to beginning a membrane filtration pilot study at a public water system.

(ii) Challenge testing must be conducted on either a full-scale membrane module identical in material and construction to the membrane modules to be used in the system's treatment facility, or a smaller-scale membrane module identical in material and similar in construction to the full-scale module if approved by the executive director.

(iii) Systems may use data from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(iv) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane product line or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of the modified membrane and determine a new QCRV for the modified membrane must be conducted and results submitted to the executive director for approval.

(B) The membrane system must be designed to conduct and record the results of direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration system approved by the executive director and meets the requirements in clauses (i) - (ii) of this subparagraph.

(i) The design must provide for direct integrity testing of each membrane unit.

(ii) The design must provide direct integrity testing that has a resolution of 3 micrometers or less.

(iii) The design must provide direct integrity testing with [a] sensitivity sufficient to verify the log removal credit approved by the executive director. Sensitivity is determined by the criteria in 40 CFR §141.719(b)(3)(iii).

(iv) The executive director may reduce the direct integrity testing requirements for membrane units.

(C) The membrane system must be designed to conduct and record continuous indirect integrity monitoring on each membrane unit. The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(D) The level of removal credit approved by the executive director shall not exceed the lower of:

(i) the removal efficiency demonstrated during challenge testing conducted under the conditions in subparagraph (A) of this paragraph, or

(ii) the maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in subparagraph (B) of this paragraph.

(E) Pilot studies must be conducted using membrane modules that will meet the requirements of this section.

(F) Membrane systems must be designed so that membrane units' feed water, filtrate, backwash supply, waste and chemical cleaning piping shall have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation. This may be accomplished by the installation of a double block and bleed valving arrangement, a removable spool system or other alternative methods approved by the executive director.

(4) Bag, cartridge or membrane filtration systems or modules installed or replaced before April 1, 2012, and used for microbiological treatment, can receive up to a 2.0-log removal credit for *Cryptosporidium* and up to a 3.0-log removal credit for *Giardia* based on site specific pilot study results, design, operation, and reporting requirements.

(5) Ultraviolet (UV) light reactors used for microbiological inactivation can receive *Cryptosporidium*, *Giardia* and virus inactivation credit if the reactors meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) UV light reactors can receive inactivation credit only if they are located after filtration.

(B) In lieu of a pilot study, the UV light reactors must undergo validation testing to determine the operating conditions under which a UV reactor delivers the required UV dose. Validation testing must be conducted according to the criteria established by 40 CFR §141.720(d)(2) and the executive director.

(i) The validation study must include the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping or channel configuration of the UV reactor; lamp and sensor locations; and other parameters determined by the executive director.

(ii) Validation testing must be conducted on a full-scale reactor that is essentially identical to the UV reactor(s) to be used by the system and using waters that are essentially identical in quality to the water to be treated by the UV reactor.

(C) The UV light reactor systems must be designed to monitor and record parameters to verify the UV reactors operation within the validated conditions approved by the executive director. The UV light reactor must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the executive director.

(h) Sanitary facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(i) Permits for waste discharges. Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary.

(j) Treatment chemicals and media. All chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

(k) Safety.

(1) Safety equipment for all chemicals used in water treatment shall meet applicable standards established by the OSHA or Texas Hazard Communication Act, Texas Health and Safety Code, Title 6, Chapter 502.

(2) Systems must comply with United States Environmental Protection Agency (EPA) requirements for Risk Management Plans.



(l) Plant operations manual. A thorough plant operations manual must be compiled and kept up-to-date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency.

(m) Security. Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

(n) Corrosion control treatment. Systems must install any corrosion control or source water treatment required by §290.117(f) and (g) of this title (relating to Regulation of Lead and Copper), respectively. Such treatment must be designed and installed consistent with the requirements of this subchapter. The requirements of 40 CFR §141.82(i) and §141.83(b)(7) relating to EPA involvement in treatment determination are adopted by reference.

#### §290.44. *Water Distribution.*

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes [pipe] for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) [psi] or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum waterline sizes. The minimum waterline sizes are for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new waterline less than ~~[under]~~ two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.  
Figure: 30 TAC §290.44(c) (No change.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities must be designed to meet the requirements of §290.45(h) of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, ~~[(less than 20 psi),]~~ adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure main-

tenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data. A water system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged to ultimately connect the ends to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

(1) When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) Potable water distribution lines and wastewater mains or laterals that form parallel utility lines shall be installed in separate trenches.

(3) No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral shall be replaced with at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral.

(iii) Where a new potable waterline parallels a new wastewater main, the wastewater main or lateral shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the wastewater main or lateral, measured vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral.

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. If the existing wastewater main or lateral shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and the standard pipe segment length of the wastewater main or lateral is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform to with one of the following options.

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral shall be located below the waterline.

(II) All sections of wastewater main or lateral within nine feet horizontally of the waterline shall be encased in an 18-foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral. The space around the carrier pipe shall be supported at five-foot (or less) intervals

with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with watertight non-shrink cement grout or a manufactured watertight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in subclause (II) of this clause or constructed of ductile iron or steel pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. Both the waterline and wastewater main or lateral must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral, one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the center line of the wastewater main or lateral. The potable waterline shall be at least six inches above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral. The use of brown coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

(5) Waterline and wastewater main or lateral manhole or cleanout separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five-foot intervals with spacers or be filled to the springline with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant.

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures, and microbiological sampling

as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when waterlines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed waterline will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed [certified] backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(C) At each residence or facility where water from a rainwater harvesting system is used for indoor potable purposes and there is a connection to a public water system, the public water system must ensure that the make-up supply line to the rainwater storage tank is provided with an air-gap that has been inspected and approved upon installation by a licensed backflow prevention assembly tester.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(i) of this title shall be tested upon installation by a licensed ~~recognized~~ backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed ~~recognized~~ backflow prevention assembly tester.

(A) Backflow ~~Recognized backflow~~ prevention assembly testers shall have completed an executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshal's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's ~~American Water Works Association~~ Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual, M14) ~~[(Manual M14)]~~. Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in Appendix F located in §290.47(f) of this title must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) ~~[mg/L]~~ or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system for indoor use, the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section [and the rainwater harvesting system may be used only for nonpotable indoor purposes].

(1) A person who intends to connect a rainwater harvesting system to a public water system for use for potable purposes must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting is located, and must receive consent from the municipality or the owner or operator of the public water system before connecting the rainwater harvesting system to the public water system.

(2) At each residence or facility where water from a rainwater harvesting system is used for indoor potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) At each residence or facility where water from a rainwater harvesting system is used for indoor potable purposes and there is a connection to a public water system, the public water system shall ensure that minimum treatment consists of filtration and disinfection.

(4) At each residence or facility where water from a rainwater harvesting system is used for indoor potable purposes and there is a connection to a public water system, the public water system may require additional levels of treatment beyond the minimum requirements of paragraph (3) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300934

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 239-2141



## SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

### 30 TAC §290.109

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.042, which allows the commission to adopt rules relating to the domestic use of harvested rainwater. Therefore, the TWC and THSC authorize rulemaking that amends §290.109, which relates to rainwater

harvesting systems (RWHS) that are connected to a public water system (PWS) and are intended for indoor potable use.

The proposed amendment implements the language set forth in House Bill (HB) 3372; §3 of HB 3391; and Senate Bill 1073, which require the commission to amend the existing rule for structures that are connected to a PWS and have a RWHS by allowing the RWHS to be used for indoor potable purposes.

#### §290.109. *Microbial Contaminants.*

(a) Applicability. All public water systems must produce and distribute water that meets the provisions of this section regarding microbial contaminants.

(b) Maximum contaminant levels (MCL) for microbial contaminants. Treatment techniques and MCL requirements for microbial contaminants are based on detection of those contaminants or fecal indicator organisms.

(1) The MCL for microbial contaminants in the distribution system is based on the presence of total or fecal coliform bacteria in routine, repeat, and increased monitoring distribution samples.

(A) For a system which collects at least 40 routine distribution samples per month, the MCL is defined as when more than 5.0% of samples collected in a month are coliform positive.

(B) For a system which collects fewer than 40 routine distribution samples per month, the MCL is defined as when more than one sample is coliform positive.

(C) The acute MCL is defined as when a repeat sample is fecal coliform or *Escherichia coli* (*E. coli*) [~~E. coli~~] positive; or a total coliform positive repeat sample follows a fecal coliform or *E. coli* positive routine sample.

(2) For systems required to collect raw groundwater samples, the standard is no detection of fecal indicators in a raw groundwater samples.

(c) Monitoring requirements for microbial contaminants. Public water systems shall collect samples for total coliform, fecal coliform, *E. coli*, or other fecal indicator organisms at locations and frequency as directed by the executive director. All compliance samples must be collected during normal operating conditions.

(1) Routine microbial sampling locations. Public water systems shall routinely monitor for microbial contaminants at the following locations.

(A) Public water systems must collect routine distribution coliform samples at active service connections which are representative of water quality throughout the distribution system. Other sampling sites may be used if located adjacent to active service connections.

(B) Public water systems shall collect distribution coliform samples at locations specified in the system's monitoring plan.

(2) Routine distribution coliform sampling frequency. Public water systems must sample for distribution coliform at the following frequency:

(A) Community and noncommunity public water systems must collect routine distribution coliform samples at a frequency based on the population served by the system.

(i) the population for noncommunity systems will be based on the maximum number of persons served on any given day during the month;

(ii) the population of community systems will be based on the data reported during the most recent sanitary survey of the public water system; and

(iii) the minimum sampling frequency for public water systems is shown in the following table.

Figure: 30 TAC §290.109(c)(2)(A)(iii) (No change.)

(B) A public water system which uses surface water or groundwater under the direct influence of surface water must collect routine distribution coliform samples at regular time intervals throughout the month.

(C) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves more than 4,900 persons must collect routine distribution coliform samples at regular time intervals throughout the month.

(D) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves 4,900 persons or fewer may collect all required routine distribution coliform samples on a single day if they are taken from different sites.

(E) A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum routine monitoring requirements of this subsection.

(F) If a system collecting fewer than five routine distribution coliform samples per month has one or more total coliform-positive samples and the executive director does not invalidate the sample(s) in accordance with subsection (d)(1) of this section, it must collect at least five routine distribution coliform samples during the next month the system provides water to the public.

(3) Repeat distribution coliform sampling requirements. Systems shall conduct repeat monitoring if one or more of the routine samples is found to contain coliform organisms.

(A) If a routine distribution coliform sample is coliform-positive, the public water system must collect a set of repeat distribution coliform samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed.

(i) A system which collects more than one routine distribution coliform sample per month must collect no fewer than three repeat samples for each coliform-positive sample found.

(ii) A system which collects one routine distribution coliform sample per month must collect no fewer than four repeat samples for each coliform-positive sample found.

(B) The system must collect all repeat samples on the same day, except a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(C) The system must collect at least one repeat sample from the sampling tap where the original coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other samples must be collected within five connections upstream of that point.

(D) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set

of repeat samples in the manner specified in subparagraphs (A) - (C) of this paragraph. The additional samples must be collected within 24 hours of being notified of the positive result or as soon as possible if the local laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded.

(E) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample is found to contain total coliform bacteria, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(4) Raw groundwater source monitoring. Groundwater systems must comply, unless otherwise noted, with the requirements of this section. Any raw groundwater source sample required under this paragraph must be collected at a location prior to any treatment of the groundwater source and use analytical procedures and methods described in §290.119(b)(10) of this title (relating to Analytical Procedures).

(A) General requirements. A groundwater system must conduct triggered source water monitoring for *E. coli* or other fecal indicators, if both of the following conditions exist.

(i) The system does not provide at least 4-log treatment of viruses (as defined in §290.103(39) of this title (relating to Definitions)) before the first customer for each groundwater source; and

(ii) The system is notified that a routine distribution coliform sample is positive and the sample is not invalidated under subsection (d)(1) of this section.

(B) Sampling requirements. A groundwater system must collect, within 24 hours of notification of the routine distribution total coliform-positive sample, at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each groundwater source in use at the time the distribution coliform-positive sample was collected.

(i) The executive director may extend the 24-hour time limit on a case-by case basis if the system cannot collect the raw groundwater source sample within 24 hours due to circumstances beyond its control.

(ii) If approved by the executive director and documented in the system's monitoring plan, systems with more than one groundwater source may be allowed to sample a representative groundwater source or sources. Systems must modify their current monitoring plan to identify one or more groundwater sources that are representative of each distribution coliform sampling site and is intended to be used for representative source sampling.

(iii) A groundwater system serving 1,000 people or fewer may use one of the four required repeat samples collected from a raw groundwater source to meet both the repeat requirements of subparagraph (A)(ii) of this paragraph and the triggered raw source monitoring requirements in this paragraph. If a required repeat sample is used to meet both requirements and found to be *E. coli* positive, the system will have achieved an acute MCL as defined in subsection (b)(1)(C) of this section and corrective action will be required for the groundwater source were the sample was found to be *E. coli* positive.

(C) Consecutive and wholesale systems. Consecutive groundwater systems receiving drinking water from a wholesaler must notify the wholesale system(s) within 24 hours of being notified of the

positive coliform distribution sample. The wholesale groundwater system(s) must comply with the following:

(i) A wholesale groundwater system that receives notice of a distribution coliform sample positive from a consecutive system it serves must collect a sample from each of its groundwater sources within 24 hours of the notification and analyze each sample for the presence of *E. coli*.

(ii) If any raw source sample is *E. coli* positive, the wholesale groundwater system must notify all consecutive systems served by that groundwater source of the fecal indicator positive within 24 hours of being notified. The wholesale system and all consecutive systems served by that groundwater source must notify their water system customers in accordance with subsection (g)(2) of this section.

(D) Exceptions to the triggered source monitoring requirements. A groundwater system is not required to comply with the triggered source monitoring requirements if any of the following conditions exist.

(i) The executive director determines and documents in writing, that the distribution coliform positive sample is caused by a distribution system deficiency; or

(ii) The distribution coliform positive sample is collected at a location that meets the distribution coliform sample invalidation criteria as specified in subsection (d)(1) of this section and the replacement sample is negative for coliforms.

(E) Assessment source monitoring. The executive director may require monthly source assessment raw monitoring without the presence of a positive total coliform distribution sample if well conditions exist that indicate the groundwater may be susceptible to fecal contamination. The executive director may conduct a hydrogeological sensitivity assessment to determine if the source is susceptible to fecal contamination. If requested by the executive director, groundwater systems must provide the executive director with any existing information that will enable the executive director to perform a hydrogeological sensitivity assessment. A groundwater system conducting assessment source monitoring may use a triggered source sample collected under subparagraph (B) of this paragraph to meet the assessment source monitoring requirement. Additionally, an assessment source monitoring sample may be used as a triggered source monitoring sample if collected within 24 hours of notification of the coliform-positive distribution sample. Assessment source monitoring requirements may include:

(i) Source monitoring, collected in a manner described in §290.119(b)(10) of this title, for a period of 12 months that represents each month that the system provides groundwater to the public from the raw groundwater source or such time period as specified by the executive director.

(ii) Collection of samples from each well unless the system has an approved triggered source monitoring plan under subparagraph (B)(ii) of this paragraph.

(5) Culture analysis. If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium will be analyzed to determine if fecal coliforms or bacteria are present. If fecal coliforms or *E. coli* are present, the system must notify the executive director by the end of the day in accordance with subsection (g) of this section.

(d) Analytical and invalidation requirements for microbial contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title. Testing for microbial contaminants shall be performed at a laboratory certified by the executive director.

(1) Distribution coliform sample invalidation. The executive director may invalidate a distribution total coliform-positive sample if one of the following conditions is met.

(A) The executive director may invalidate a sample if the laboratory provides written notice that improper sample analysis caused the total coliform-positive result.

(B) The executive director may invalidate a sample if the results of repeat samples collected, as required by this section, determine [determines] that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The executive director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples.

(C) The executive director may invalidate a sample if there are substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in subsection (f) of this section. The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and the action the system has taken, or will take, to correct this problem. The executive director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(D) The executive director may invalidate a sample if the laboratory provides written notice that the sample was unsuitable for analysis.

(E) If a sample is invalidated by the laboratory, the system must collect another sample from the same location as the original sample within 24 hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliform. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(2) A groundwater system may obtain invalidation of a fecal indicator positive groundwater source sample if the conditions of subparagraphs (A) and (B) of this paragraph apply. If the executive director invalidates a fecal indicator positive groundwater source sample, the system must collect another source sample as specified in subsection (c)(4) of this section within 24 hours of being notified of the invalidation.

(A) Notice from the laboratory must document that improper sample analysis occurred. If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli*. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. If approved by the executive director, the 24-hour time limit may be extended.

(B) The executive director may invalidate the sample if the system provides written documentation that there is substantial evidence that a fecal indicator positive groundwater source sample is not related to source water quality. If the executive director invalidates a sample, the system must collect another sample from the same location

as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli*.

(e) Reporting requirements for microbial contaminants. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for microbial contaminants. Compliance with the requirements of this section shall be determined using the following criteria each month that the system is in operation.

(1) A system commits an acute MCL violation if:

(A) A repeat distribution system sample is fecal coliform-positive or *E. coli*-positive; or

(B) A total coliform-positive repeat distribution system sample follows a fecal coliform-positive or *E. coli*-positive routine distribution system sample.

(2) A system that collects at least 40 routine distribution coliform samples per month commits a nonacute MCL violation if more than 5.0% of the samples collected during a month are total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli*-positive.

(3) A system that collects fewer than 40 routine distribution coliform samples per month commits a nonacute MCL violation if more than one sample collected during a month is total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *E. coli*-positive.

(4) A public groundwater system that is required to collect raw source samples is required to conduct corrective action as described in §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques) and is required to provide public notification in accordance with §290.122(a) [§209.122(a)] of this title (relating to Public Notification) if a source sample is confirmed positive for *E. coli* or other approved fecal indicators.

(5) A public water system that fails to provide the required number of suitable distribution coliform samples commits a monitoring violation.

(6) A public water system that fails to monitor in accordance with the requirements of subsection (c)(4) of this section commits a monitoring violation and must provide public notification in accordance with §290.122 of this title.

(7) A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(8) A public water system that fails to do a required public notice or certify that notification has been performed commits a public notice reporting violation.

(9) Results of all routine and repeat distribution coliform samples not invalidated by the executive director must be included in determining compliance with the MCL for total coliforms.

(10) Distribution coliform samples invalidated by the executive director shall not be included in determining compliance with the MCL for total coliforms.

(11) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for microbiological contaminants.

(g) Public notification for microbial contaminants. A system that is out of compliance with the requirements described in this section must notify the public using the procedures described in §290.122 of this title for microbial contamination.

(1) A public water system that commits an acute MCL violation for microbial contaminants must notify the water system customers in accordance with the boil water notice requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the public notice requirements of §290.122(a) of this title.

(2) A public groundwater system that receives an *E. coli* or other fecal indicator positive source sample that has not been invalidated by the executive director, or a notice of an *E. coli* or other fecal indicator positive source sample from a wholesale system, including consecutive systems, must notify the water system customers within 24-hours in accordance with the requirements of §290.122(a) of this title and include notice in the next Consumer Confidence Report for community systems or provide as a special notice for noncommunity systems in accordance with §290.272(g)(7) of this title (relating to Content of the Report) for community water systems and §290.116(f)(2) of this title for noncommunity systems. Consecutive systems must issue public notice in accordance with §290.122(g) of this title. The system must continue to notify the public annually until the fecal contamination in the source water is determined by the executive director to be corrected as specified under §290.116 of this title.

(3) A public water system that has fecal coliforms or *E. coli* present must notify the executive director by the end of the day when the system is notified of the test result, unless the system is notified of the result after the commission's office is closed, in which case the system must notify the executive director before the end of the next business day.

(4) A public water system which commits an MCL violation must report the violation to the executive director immediately after it learns of the violation, but no later than the end of the next business day, and notify the public in accordance with §290.122(b) of this title.

(5) A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the executive director within ten days after the system discovers the violation and notify the public in accordance with §290.122(c) of this title.

(h) At each residence or facility where water from a rainwater harvesting system is used for indoor potable purposes and there is a connection to a public water system, the public water system shall be responsible for ensuring that the microbiological quality of the treated rainwater is monitored at least annually. The public water system may require more frequent microbiological monitoring.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.  
TRD-201300933



◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**

**SUBCHAPTER V. FRANCHISE TAX**

**34 TAC §3.588**

The Comptroller of Public Accounts proposes an amendment to §3.588, concerning margin: cost of goods sold.

Subsection (a) is amended to add new paragraph (9), which defines the term "service costs." The following paragraphs are renumbered accordingly.

Subsection (c) is amended to correct typographical errors and to memorialize current comptroller policies. Subsection (c)(3) is amended to implement a change in the comptroller's policy regarding taxable entities filing amended franchise tax returns to change their election to use either the compensation deduction method or the cost of goods sold (COGS) method to compute margin. See STAR Accession No. 201206444L (June 12, 2012). Previously, the regulations stated that if a taxable entity made an election to compute its margin using the COGS method, the entity could not, after the due date of the original report, file an amended report to change the method of computing margin from the COGS method to the compensation deduction method. The revised regulations provide that a taxable entity that initially computed its margin using the COGS method may file an amended report to change the method of computing margin to the compensation deduction method, 70% of total revenue, or, if qualified, the E-Z computation method.

Subsection (d) is amended to improve readability, correct typographical errors, and clarify which expenses qualify as direct costs of acquiring or producing goods under Tax Code, §171.1012(c). Subsection (d), which is currently named "Cost of goods sold," is proposed to be renamed "Direct costs." Subsection (d)(1), concerning labor costs, is amended to memorialize the comptroller's revised policy, which is based in part on federal income tax requirements, regarding the labor expenses that may be included in a taxpayer's cost of goods sold calculation under Tax Code, §171.1012(c)(1). Internal Revenue Code (IRC), §263A identifies costs that would otherwise be deductible as ordinary and necessary business expenses for federal income tax purposes but must instead be capitalized into inventory. Under IRC, §263A, taxpayers must capitalize both direct labor and material costs and indirect costs that directly benefit, or are incurred by reason of, the performance of production activities. Many of the indirect costs that are required to be capitalized for federal purposes are specifically referenced in Tax Code, §171.1012(c) as part of "all direct costs of acquiring or producing goods." Based upon this, the comptroller has concluded that Tax Code, §171.1012(c)(1) allows taxable entities to include in their cost of goods sold calculation both direct labor costs and those indirect labor costs, other than service costs, that

are subject to capitalization under the Treasury Regulations interpreting IRC, §263A. The proposed amendments reflect this policy determination.

The comptroller is aware that many taxpayers fall under the regulations related to IRC, §460, rather than IRC, §263A. The amendments proposed in this subsection include a reference to the federal regulations interpreting IRC, §460, which apply the rules set forth in the relevant portions of the 263A regulations. In addition, the proposed amendments make clear that the expenses described in proposed subsection (d)(1) are expenses of the type that are subject to capitalization under IRC, §263A, without regard to whether a taxable entity actually capitalized those expenses on its federal return.

Finally, subsection (f) is amended to correct typographical errors and to explain the comptroller's existing policy more clearly. Tax Code, §171.1012(f) places a four percent cap on a taxpayer's deduction for "indirect or administrative overhead costs, including all mixed service costs...that...are allocable to the acquisition or production of goods." The indirect or administrative overhead costs identified under Tax Code, §171.1012(f) are analogous to "service costs" in the federal regulations interpreting IRC, §263A. These "service costs" are defined as "a type of indirect costs (e.g., general and administrative costs) that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function." The federal regulations differentiate between deductible service costs, service costs that must be capitalized, and mixed service costs. Tax Code, §171.1012(f), however, applies to all service costs that the taxpayer can demonstrate are allocable to the acquisition or production of goods because the legislature specifically included examples of both deductible service costs and service costs that must be capitalized for federal purposes. Under the plain language of the statute, indirect or administrative overhead costs that are not allocable to the production or acquisition of goods cannot be included in COGS.

Under the comptroller's revised policy, as reflected in the proposed amendments to subsections (a)(9), (d)(1), and (f), taxpayers may include the following labor expenses in their cost of goods sold calculation: all direct labor costs; all indirect labor costs, other than service costs, that are capitalized under IRC, §263A; and service costs that are allocable to the acquisition or production of goods, subject to a 4.0% cap.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing clarification to businesses subject to the franchise tax regarding the computation of cost of goods sold under Tax Code, Chapter 171. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §171.1012.

§3.588. *Margin: Cost of Goods Sold.*

(a) **Effective Date.** The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Arm's length--**The standard of conduct under which entities that are not related parties and that have substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) **Computer program--**A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, printed instructions, or other tangible or electronic media.

(3) **Goods--**Real or tangible personal property sold in the ordinary course of business of a taxable entity. "Goods" includes:

- (A) the husbandry of animals;
- (B) the growing and harvesting of crops;
- (C) the severance of timber from realty.

(4) **Heavy construction equipment--**Self-propelled, self-powered, or pull-type equipment that weighs at least 3,000 pounds and is intended to be used for construction. The term does not include a motor vehicle required to be titled and registered.

(5) **Lending institution--**An entity that makes loans and:

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c; or

(D) provides financing to unrelated parties solely for agricultural production.

(6) **Principal business activity--**The activity in which a taxable entity derives the largest percentage of its "total revenue".

(7) **Production--**Construction, manufacture, installation occurring during the manufacturing or construction process, development, mining, extraction, improvement, creation, raising, or growth.

(8) **Related party--**A person, corporation, or other entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, whether the person, corporation, or entity is subject to the tax under this chapter or not, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a controlling interest in another entity.

(9) **Service costs--**Indirect labor costs and administrative overhead costs that can be identified specifically with a service department or function, or that directly benefit or are incurred by reason of a service department or function. For purpose of this section, a service department includes personnel, accounting, data processing, security, legal, and other similar departments.

(10) ~~[(9)]~~ **Tangible personal property--**

(A) includes:

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

(iii) a computer program, as defined in paragraph (2) of this subsection.

(B) does not include:

- (i) intangible property or
- (ii) services.

(11) ~~[(10)]~~ **Undocumented worker--**A person who is not lawfully entitled to be present and employed in the United States.

(c) **General rules for determining cost of goods sold.**

(1) **Affiliated entities.** Notwithstanding any other provision of this section, a payment made by one member of an affiliated group to another member of that affiliated group not included in the combined group may be subtracted as a cost of goods sold only if it is a transaction made at arm's length.

(2) **Capitalization or expensing of certain costs.** The election to capitalize or expense allowable costs is made by filing the franchise tax report using one method or the other. The election is for the entire period on which the report is based and may not be changed after the due date or the date the report is filed, whichever is later. A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Internal Revenue Code, §§263A, 460, or 471 (including a taxable entity subject to §471 that elects to use LIFO under §472), may elect to:

(A) Capitalize those costs in the same manner and to the same extent that the taxable entity capitalized those costs on its federal income tax return, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section. A taxable entity that elects to capitalize costs on its first report due on or after January 1, 2008, may include, in beginning inventory, costs allowable for franchise tax purposes that would be in beginning inventory for federal income tax purposes.

(i) If the taxable entity elects to capitalize those costs allowed under this section as a cost of goods sold, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return.

(ii) If the taxable entity later elects to begin expensing those costs allowed under this section as a cost of goods sold, the

entity may not deduct any cost incurred before the first day of the period on which the report is based, including any ending inventory from a previous report.

(B) Expense those costs, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section.

(i) If the taxable entity elects to expense those costs allowed under this section as a cost of goods ~~good~~ sold, costs incurred before the first day of the period on which the report is based may not be subtracted as a cost of goods sold.

(ii) If the taxable entity later elects to begin capitalizing those costs allowed under this section as a cost of goods sold, costs incurred prior to the accounting period on which the report is based may not be capitalized.

(3) Election to subtract cost of goods sold. A taxable entity, if eligible, must make an annual election to subtract cost of goods sold in computing margin by the due date, or at the time the report is filed, whichever is later. The election to subtract cost of goods sold is made by filing the franchise tax report using the cost of goods sold method. An amended report may be filed within the time allowed by Tax Code, §111.107 to change the method of computing margin from the cost of goods sold deduction method to the compensation deduction method, 70% of total revenue, or, if otherwise qualified, the E-Z Computation method. See §3.584 of this title (relating to Margin: Reports and Payments).

[(A) After the due date of the report, an amended report may not be filed to change the method of computing margin to the compensation deduction.]

[(B) An amended report may be filed to change the method of computing margin from the cost of goods sold deduction to 70% of total revenue or, if qualified, the E-Z Computation. See §3.584 of this title (relating to Margin: Reports and Payments).]

(4) Exclusions from total revenue. Any expense excluded from total revenue (see §3.587 of this title (relating to Margin: Total Revenue)) may not be included in the determination of cost of goods sold.

(5) Film and broadcasting. A taxable entity whose principal business activity is film or television production or broadcasting or the sale of broadcast rights or the distribution of tangible personal property described by subsection (b)(9)(A)(ii) of this section, or any combination of these activities, and who elects to use cost of goods sold to determine margin, may include as cost of goods sold:

(A) the costs described in this section in relation to the property;

(B) depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including

(C) expenses for the right to broadcast or use the property.

(6) Lending institutions. Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the public and elects to subtract cost of goods sold, the entity may subtract as a cost of goods sold an amount equal to interest expense.

(A) This paragraph does not apply to entities primarily engaged in an activity described by category 5932 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(B) For purposes of this subsection, an entity engaged in lending to unrelated parties solely for agricultural production offers loans to the public.

(7) Mixed transactions. If a transaction contains elements of both a sale of tangible personal property and a service, a taxable entity may only subtract as cost of goods sold the costs otherwise allowed by this section in relation to the tangible personal property sold.

(8) Owner of goods. A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. The determination of whether a taxable entity is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxable entity.

(A) A taxable entity furnishing labor or materials to a project for the construction, improvement, remodeling, repair, or industrial maintenance (as the term "maintenance" is defined in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance)), of real property is considered to be an owner of the labor or materials and may include the costs, as allowed by this section, in the computation of the cost of goods sold.

(B) Solely for the purposes of this section, a taxable entity shall be treated as the owner of goods being manufactured or produced by the entity under a contract with the federal government, including any subcontracts that support a contract with the federal government, notwithstanding that the Federal Acquisition Regulations may require that title or risk of loss with respect to those goods be transferred to the federal government before the manufacture or production of those goods is complete.

(9) Rentals and leases. Notwithstanding any other provision of this section, the following taxable entities may subtract as cost of goods sold the costs otherwise allowed by this section in relation to tangible personal property that the entity rents or leases in the ordinary course of business of the entity:

(A) a motor vehicle rental company that remits a tax on gross receipts imposed under Tax Code, §152.026 or a motor vehicle leasing company;

(B) a heavy construction equipment rental or leasing company; and

(C) a railcar rolling stock rental or leasing company.

(10) Reporting methods. A taxable entity shall determine its cost of goods sold, except as otherwise provided by this section, in accordance with the methods used on the federal income tax return on which the report under this chapter is based. This subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(11) Restaurants and bars. Entities engaged in activities described in Major Group 58 (Eating and Drinking Places) of the Standard Industrial Classification Manual may deduct for cost of goods sold only those expenses allowed under subsections (d), (e) and (f) of this section, that relate to the acquisition and production of food and beverages. Any costs related to both the production of food and beverages and to other activities must be allocated to production on a reasonable basis.

(d) Direct costs [Cost of goods sold]. The cost of goods sold includes all direct costs of acquiring or producing the goods. Direct costs include[, including]:

(1) Labor costs. A taxable entity may include in its cost of goods sold calculation labor costs, other than service costs, that are properly allocable to the acquisition or production of goods and are of the type subject to capitalization or allocation under Treasury Regulation Sections 1.263A-1(e) or 1.460-5 as direct labor costs, indirect labor costs, employee benefit expenses, or pension and other related costs, without regard to whether the taxable entity actually capitalizes such costs for federal income tax purposes. ~~[labor costs including W-2 wages, IRS Form 1099 wages, temporary labor, payroll taxes and benefits;]~~

(A) For purposes of this section, labor costs include W-2 wages, IRS Form 1099 wages, temporary labor expenses, payroll taxes, pension contributions, and employee benefits expenses, such as per diem reimbursements for travel expenses and health insurance.

(B) Labor costs under this paragraph shall not include any type of costs includable in subsection (f) or excluded in subsection (g) of this section. Costs for labor that do not meet the requirements set forth in this paragraph may still be subtracted as a cost of goods sold if the cost is allowed under another provision of this section. For example, service costs may be included in a taxable entity's cost of goods sold calculation to the extent provided by subsection (f) of this section.

(2) Incorporated materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are an integral part of specific property produced.~~;~~

(3) Consumable materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are consumed in the ordinary course of performing production activities.~~;~~

(4) Handling costs. A taxable entity may include in its cost of goods sold calculation handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation.~~;~~

(5) Storage costs. A taxable entity may include in its cost of goods sold calculation storage costs, including the costs of carrying, storing, or warehousing property, subject to subsection (g) of this section, concerning excluded costs.~~;~~

(6) Depreciation, depletion, and amortization. A taxable entity may include in its cost of goods sold calculation depreciation, depletion, and amortization~~;~~ reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery described by Internal Revenue Code, §197, and property described in Internal Revenue Code, §179.~~;~~

(7) Rentals and leases. A taxable entity may include in its cost of goods sold calculation the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs.~~;~~

(8) Repair and maintenance. A taxable entity may include in its cost of goods sold calculation the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices.~~;~~

(9) Research and development. A taxable entity may include in its cost of goods sold calculation the costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Internal Revenue Code, §174.~~;~~

(10) Mineral production. A taxable entity may include in its cost of goods sold calculation geological and geophysical costs in-

curred to identify and locate property that has the potential to produce minerals.~~;~~

(11) Taxes. A taxable entity may include in its cost of goods sold calculation taxes paid in relation to acquiring or producing any material, or taxes paid in relation to services that are a direct cost of production.~~;~~

(12) Electricity. A taxable entity may include in its cost of goods sold calculation the cost of producing or acquiring electricity sold.~~;~~ and

(13) A taxable entity may include in its cost of goods sold calculation a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the contributing taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold by the partnership.

(e) Additional costs. In addition to the amounts includable under subsection (d) of this section, the cost of goods sold includes the following costs in relation to the taxable entity's goods:

(1) deterioration of the goods;

(2) obsolescence of the goods;

(3) spoilage and abandonment, including the costs of rework, reclamation, and scrap;

(4) if the property is held for future production, preproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;

(5) postproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;

(6) the cost of insurance on a plant or a facility, machinery, equipment, or materials directly used in the production of the goods;

(7) the cost of insurance on the produced goods;

(8) the cost of utilities, including electricity, gas, and water, directly used in the production of the goods;

(9) the costs of quality control, including replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of goods; and

(10) licensing or franchise costs, including fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right directly associated with the goods produced.

(f) Indirect or administrative overhead costs. A taxable entity may subtract as a cost of goods sold those service costs, including mixed service costs, [indirect or administrative overhead costs] that it can demonstrate are properly allocable to the acquisition or production of goods. The [This] amount subtracted may not exceed 4.0% of total service costs [indirect or administrative overhead cost].

(1) Service [Indirect or administrative overhead] costs may include, but are not limited to, [all mixed service costs, such as] security services;~~;~~ legal services;~~;~~ data processing services;~~;~~ accounting services, including accounts payable, disbursements, and payroll functions; personnel operations, including the cost of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees; and general financial planning and financial management costs.

(2) Any costs already subtracted under subsections (d) or (e) of this section[.] may not be subtracted under this subsection.

(3) Any costs excluded under subsection (g) of this section[.] may not be subtracted [included] under this subsection.

(g) Costs not included. The cost of goods sold does not include the following costs in relation to the taxable entity's goods:

(1) the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;

(2) selling costs, including employee expenses related to sales;

(3) distribution costs, including outbound transportation costs;

(4) advertising costs;

(5) idle facility expenses;

(6) rehandling costs;

(7) bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;

(8) unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;

(9) interest, including interest on debt incurred or continued during the production period to finance the production of the goods;

(10) income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;

(11) strike expenses, including costs associated with hiring employees to replace striking personnel, but not including the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes;

(12) officers' compensation;

(13) costs of operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States;

(14) any compensation paid to an undocumented worker used for the production of goods; and

(15) costs funded by a partnership contribution, to the extent that the contributing taxable entity made the cost of goods sold deduction under subsection (d)(13) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 4, 2013.

TRD-201300956

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 475-0387

◆ ◆ ◆

## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 25. MEMBERSHIP CREDIT

#### SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

##### 34 TAC §25.1, §25.6

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.1 and §25.6, concerning service eligible for TRS membership, in Chapter 25, Subchapter A of TRS' rules. Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS.

Section 25.1 establishes the standards for membership eligibility: employment for one-half or more of the standard full-time work load, for a period of four and one-half months or more, with pay at a rate comparable to the rate of compensation for other persons employed in similar positions. Consistent application of this standard is difficult when the work load is expressed in terms of semester hours or course credits, which is the common practice for faculty employed in higher education institutions, rather than clock hours.

TRS proposes amending §25.1 with the same ratio for converting semester hours or course credits to clock hours used for the purpose of determining the number of hours worked by a retiree employed by a higher education institution under the one-half time exception in 34 TAC §31.14 (relating to One-half Time Employment): a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab. This conversion ratio would reflect the instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. The proposed amendments would clarify that if the employer uses a higher ratio for converting preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work. The proposed amendments would also clarify that employment in an institution of higher education is "regular" employment if it is *expected* to continue more than one full semester in the same school year or if it continues for more than one full semester in a school year. Providing the same conversion ratio for membership eligibility and employment after retirement will reduce confusion, ease communication, and improve consistent administration of the standard.

Section 25.6 addresses part-time or temporary employment. TRS proposes incorporating the current administrative interpretation of temporary employment for purposes of determining eligibility for membership in TRS for employees of higher education institutions. Amending the rule to specifically define temporary employment for higher education faculty will further the consistent application of the eligibility requirements and simplify communication regarding the standard for temporary employment.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.1 and §25.6 will be in effect, there may be fiscal implications to state or local governments as a result of administering the proposed amended rules. A higher education employer may determine that some individuals employed in positions previously not eligible for TRS membership will now be required to be reported as

members; similarly, an employer may determine that some individuals employed in positions previously eligible for TRS membership are no longer eligible for TRS membership. The amendments would apply prospectively, and employers may be required to adjust the status of certain employees as TRS members, with commensurate prospective changes in employer contributions to TRS for members whose status changes. Employers are required to pay the equivalent of the state contribution for new members in the first 90 days of employment and are required to pay a contribution to TRS-Care on behalf of eligible employees; employers also are required to pay an amount equivalent to the state contribution on salary above the statutory minimum. To the extent an employer will report more or fewer employees as TRS members, the employer's contributions to TRS may increase or decrease. TRS cannot precisely estimate the aggregate fiscal implications for public education employers because it is not known how many employees will be subject to a change in status regarding TRS membership eligibility.

For each year of the first five years that the proposed amendments will be in effect, Mr. Welch has determined that the public benefit will be to clarify and simplify the determination of TRS membership eligibility by higher education employers for regular, full-time service and part-time or temporary employment.

Mr. Welch has determined that there may be economic cost to entities or persons required to comply with the proposed amended rules. Some employees previously ineligible for TRS membership may become eligible for membership, due to the standard used for determining membership eligibility and employment after retirement. For an individual who became a TRS member based on employment in a position previously eligible for membership but whose ongoing employment is no longer considered TRS-eligible under the changes, the employee would not be able to accrue additional years of service credit for the employment. No employer or employee contributions would be due on compensation for the service that is no longer eligible for membership under the changes. TRS cannot estimate how many employees will experience a change in status regarding eligibility for TRS membership and for the accrual of TRS benefits because of the amended rules or any related economic costs because of the variable employment and reporting practices of individual employers.

Mr. Welch has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under Texas Government Code §2001.022. Mr. Welch has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Texas Government Code §2006.002.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendments are proposed under Texas Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute. The proposed amendments affect the following statutes: Texas Government Code §821.001(6),

which defines "employee"; Texas Government Code §822.001, which states the membership requirement; Texas Government Code §823.002, which addresses service creditable in a year; and Texas Government Code §825.403 which addresses collection of member contributions.

#### *§25.1. Full-time Service.*

(a) - (f) (No change.)

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment with an institution of higher education (including community and junior colleges) is regular employment if it is expected to continue for more than one full semester or continues for more than one full semester in the same school year. Employment that is expected to continue for less than four and one-half months or for no more than one full semester in a school year is temporary employment and is not eligible for membership.

(h) (No change.)

(i) For purposes of this section, employment in institutions of higher education (including community and junior colleges) measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work.

#### *§25.6. Part-time or Temporary Employment.*

Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or, for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300908

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## SUBCHAPTER B. COMPENSATION

### 34 TAC §25.21

The Teacher Retirement System of Texas (TRS) proposes an amendment to §25.21, concerning compensation subject to deposit and credit, in Chapter 25, Subchapter B of TRS' rules.

Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees and whether such compensation is creditable for TRS benefit calculation purposes.

The proposed rule amendment addresses the conditions for determining that workers' compensation paid as temporary wage replacement is creditable compensation for TRS purposes. Currently, there is no reference to workers' compensation in the TRS rule regarding creditable compensation. However, the current practice is to credit workers' compensation for any month that the member also receives creditable compensation from the employer. Because workers' compensation is not paid directly by the employer, the member must verify the workers' compensation to TRS after the fact and make deposits on the amount of workers' compensation paid. The cost to establish unreported service or compensation credit has increased to reflect the actuarial cost of increased benefits associated with the additional compensation credit or service credit. Consequently, TRS proposes amending §25.21 by providing notice of how the temporary wage replacement benefit will be credited by TRS. The proposed amendment provides that workers' compensation is creditable compensation that does not have to be purchased at an increased cost if the compensation is reported or verified to TRS by the end of the school year following the year in which it was paid. This amendment will allow a member sufficient time to verify the compensation and pay the member contributions before the cost is increased.

Ken Welch, TRS Deputy Director, estimates that for each year of the first five years the proposed amendment to §25.21 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule. Mr. Welch explains that any fiscal impact to the state, the TRS pension trust fund, or a local government is negligible because the proposed rule amendment reflects and expressly clarifies TRS' current practice under the law.

For each year of the first five years that the proposed amendment will be in effect, Brian Guthrie, TRS Executive Director has determined that the public benefit will be to clarify and provide guidance as to the conditions under which TRS will credit workers' compensation paid as temporary wage replacement pay.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendment will be in effect, there will be no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Guthrie and Mr. Welch have determined that there will be no measurable impact on a local economy or local employment because of the proposed rule, and therefore no local employment impact statement is required under Texas Government Code §2001.022. Mr. Guthrie and Mr. Welch have determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority, and therefore neither an economic impact statement nor a regulatory flexibility analysis is required under Texas Government Code §2006.002.

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than thirty (30) days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendment is proposed under Texas Government Code §825.102, which authorizes the Board of

Trustees to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute. The proposed amendment affects Texas Government Code §821.001(4), which defines "annual compensation"; and Texas Government Code §822.201, which describes compensation subject to report, deposit, and credit.

*§25.21. Compensation Subject to Deposit and Credit.*

(a) - (b) (No change.)

(c) The following types of monetary compensation are to be included in annual compensation:

(1) - (8) (No change.)

(9) amounts deducted from regular pay for a qualified transportation benefit under Texas Government Code §659.202; ~~and~~

(10) compensation designated as health care supplementation by an employee under Subchapter D ~~of~~ Chapter 22, Education Code; ~~and~~

(11) workers' compensation paid as temporary wage replacement pay and reported or verified to TRS and with member contributions paid on the amount of workers' compensation, by the end of the school year following the year in which it was paid. Workers' compensation paid as temporary wage replacement pay and not reported or verified to TRS with member contributions paid on the workers' compensation in the time period provided may be verified and purchased as provided in §25.45 of this title (relating to Verification of Unreported Compensation or Service) and §25.43 of this title (relating to Cost for Unreported Service or Compensation) no later than the end of the fifth year following the school year in which it may be reported or verified under this paragraph.

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300909

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

### 34 TAC §25.43, §25.47

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.43 and §25.47, concerning fee on deposits for unreported service or compensation, in Chapter 25, Subchapter C of TRS' rules. Chapter 25 concerns membership credit, and Subchapter C establishes policies related to service or compensation a member's employer must report but did not.

Section 25.43 concerns the cost for unreported service or compensation. TRS proposes amending §25.43 by adding subsection (g), which addresses the amount that must be paid to TRS to receive not only compensation credit for workers' compensation

but also service credit associated with the workers' compensation. Under proposed §25.43(g), if the workers' compensation is reported or verified to TRS no later than the last day of the school year following the school year in which the workers' compensation is paid, the cost to establish the compensation and associated service credit is the amount of member contributions owed on the compensation. The cost of the compensation and associated service credit must be paid in a lump sum no later than the last day of the school year following the year in which the workers' compensation was paid. If the compensation and associated service credit are not verified or reported and the member contributions not paid by the end of the school year following the school year in which the workers' compensation was paid, the cost of establishing the compensation or service credit is the actuarial cost of unreported service or compensation described in §25.43(a).

Section 25.47 concerns the deadline for verification of unreported compensation or service. TRS proposed amending §25.47 by adding subsection (d) to clarify that workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.43 and §25.47 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules. Mr. Welch explains that any fiscal impact to the state, the TRS pension trust fund, or a local government is negligible because the proposed amendments reflect and expressly clarify TRS' current practice under the law.

For each year of the first five years that the proposed amendments will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to clarify and provide guidance as to how TRS applies rules concerning verification of unreported service or compensation and the cost of establishing credit with regard to workers' compensation paid as temporary wage replacement pay.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable economic cost to entities or persons required to comply with the proposed amended rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under Texas Government Code §2001.022. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Texas Government Code §2006.002.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendments are proposed under Texas Government Code §825.102, which authorizes the Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute. The proposed amendments affect Texas Government Code §825.403 concerning the collection of member contributions.

*§25.43. Cost for Unreported Service or Compensation.*

(a) Except as provided by subsections (e), ~~and~~ (f), and (g) of this section, the cost of establishing unreported service or compensation credit is the actuarial cost, as determined by TRS, of the additional standard annuity retirement benefits that would be attributable to the unreported service or compensation credit purchased under this subchapter.

(b) - (f) (No change.)

(g) For purposes of this section, workers' compensation paid as temporary wage replacement pay may be reported or verified to TRS until the end of the school year following the school year in which it is paid. If the workers' compensation is reported or verified to TRS no later than the end of the school year following the school year in which it is paid, member contributions on the workers' compensation paid are required to establish the compensation and service credit associated with the workers' compensation. The member contributions on the worker's compensation must be paid in full in a lump sum by the end of the school year following the year in which the workers' compensation was paid. If the workers' compensation is not reported or verified and member contributions are not paid by the end of the school year following the year in which the workers' compensation is paid, the member may establish the service and compensation as unreported compensation as provided in this section.

*§25.47. Deadline for Verification.*

(a) - (c) (No change.)

(d) For purposes of this section, workers' compensation paid as temporary wage replacement pay is not unreported compensation until after the end of the school year following the school year in which the compensation was paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300910

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

### 34 TAC §25.81

The Teacher Retirement System of Texas (TRS) proposes an amendment to §25.81, concerning out-of-state service eligible for credit. Chapter 25 concerns membership credit, and Subchapter G establishes policies for eligible members to purchase up to 15 years of out-of-state service credit in the system.

Section 25.81 establishes out-of-state service credit. TRS proposes amending §25.81 to reflect the new 90-day standard



adopted in 34 TAC §25.131 (relating to Required Service) for establishing a creditable year of service credit, beginning with the 2011-2012 school year. The proposed amendment to §25.81 requires a member to have worked in an otherwise eligible position in an out-of-state school at least 90 days of a school year in order to purchase the related service credit.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendment to §25.81 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amendment will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide clarified guidance in administering the rules concerning establishing out-of-state service credit.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendment will be in effect, there will be no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendment is proposed under Texas Government Code §825.102, which authorizes the Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute. The proposed amendment affects Texas Government Code §825.401, which concerns out-of-state service.

*§25.81. Out-of-State Service Eligible for Credit.*

A member may obtain out-of-state service credit for qualified employment in public educational institutions which are maintained in whole or in part by one of the states in the United States of America; by a commonwealth, territory, or possession of the United States of America; or by the United States government. Public educational institutions of the United States government must have been maintained for the primary purpose of educating the children of United States citizens either in foreign countries or in locations within the United States where state and local government have not provided public educational facilities. The service in eligible institutions must satisfy the requirements for membership in the Teacher Retirement System of Texas, except for the requirement that the employment be in Texas. Further, the service must have been for at least 4 1/2 months of the school year, or for at least a full semester of more than four calendar months, or for at least 90 days of a school year as a substitute in a position otherwise eligible for out-of-state service. For service rendered in the 2011-2012 school year and after, a member must have worked or received paid

leave for at least 90 days in a school year in a position otherwise eligible for out-of-state service or worked for at least 90 days in a school year as a substitute in a position otherwise eligible for out-of-state service. A member may satisfy any of these requirements by combining the out-of-state service with employment in the Texas public schools that occurred in the same school year and for which deposits are maintained in the member's account. A member eligible to establish normal membership service credit for a school year may not obtain out-of-state credit for that year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300911

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

#### 34 TAC §31.14

The Teacher Retirement System of Texas (TRS) proposes an amendment to §31.14 of Chapter 31, Subchapter B, concerning employment after service retirement. TRS proposes an amendment to §31.14, relating to one-half time employment, to establish a single standard for determining the amount of time that all service retirees can work without forfeiting the monthly annuity.

The proposed amendment to §31.14 addresses how employment in institutions of higher education that is expressed in terms of the number of courses or semester hours taught is considered in determining the number of clock hours that can be worked under the limits for one-half time employment by a retiree. The most recent changes made to this rule provided a new standard for one-half time employment. One-half time means working no more than the equivalent of four clock hours for each work day in that calendar month. The new standard for retirees working for TRS-covered employers allowed a retiree to work one-half time without forfeiting the annuity payable for that month. A conversion ratio was also added to the rule that required work expressed in course or semester hours to be converted to clock hours. The ratio was two clock hours for each course or semester hour.

Experience with the new language revealed a further need for clarification in the ratio language that is addressed in the proposed amendments. Rather than converting semester hours or course credits to clock hours, the proposed amendments direct that the number of hours of instruction in the classroom or lab be converted to clock hours using the conversion ratio. The conversion ratio takes into account not only the amount of time spent instructing students, but also the amount of preparation time, time spent grading work and submitting grades, and similar work re-

lated to the classroom instruction. This amendment is proposed to eliminate the need to specifically include the many different terms used by employers to describe the amount of work performed by faculty by using a single standard of the amount of time in the classroom or lab to ensure consistent application of the limit.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendment to §31.14 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amendment will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide clarification, guidance, and documentation in administering the section concerning employment after retirement for service retirees and to simplify the administration of the employment after retirement for service retirees, their employers, and TRS.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendment will be in effect, there will be no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy or local employment because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority. The amendment is proposed under the following statutes: Texas Government Code §824.601(f), which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Texas Government Code concerning loss of benefits on resumption of service; Texas Government Code §824.602(j), which relates to exceptions to loss of benefits on resumption of service and requires the board to adopt rules defining "one-half time basis"; and Texas Government Code §825.102, which authorizes the Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute. The proposed amendment affects Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service.

#### §31.14. *One-half Time Employment.*

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of 4 clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in the determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education [in state-supported colleges] (including community and junior colleges); and universities] that is expressed [measured] in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab [per one course or semester hour] in order to reflect instructional time as well as preparation, grading, and other time typically associated with one [course] hour of instruction. If the employer has established a greater amount of preparation time for each [course or semester] hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs [course or semester hours] a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title [chapter] (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title [chapter] (relating to Full-time Employment after 12 Consecutive Month [12-Consecutive-Month] Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300912

◆ ◆ ◆  
**SUBCHAPTER D. EMPLOYER PENSION  
SURCHARGE**

**34 TAC §31.41**

The Teacher Retirement System of Texas (TRS) proposes an amendment to §31.41 of Chapter 31, Subchapter D, concerning employer pension surcharge.

The proposed amendment to §31.41 addresses the requirements for triggering payment of the pension surcharge. Currently, a pension surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and is working in a TRS-eligible position. Experience with using two different one-half time standards to evaluate the employment of a retiree highlighted the confusion experienced by employers, the difficulty in communicating the two standards to employers and retirees, and the unanticipated cost to both parties when the work triggered the surcharges. The standard for one-half time employment that avoids loss of the monthly annuity is working no more than the equivalent of four clock hours for each work day in the calendar month under 34 TAC §31.14 (relating to One-half Time Employment). The proposed amendments establish this same standard for triggering payment of the surcharge.

The opening clauses of new §31.41(i), (j), and (k) will address how the rules apply for school years prior to the 2013-2014 school year by following the existing requirements and standard for triggering payment of the health benefit surcharge.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendment to §31.41 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amendment will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide clarification, guidance, and documentation in administering the section concerning employment after retirement for service retirees and to simplify the administration of the employment after retirement for service retirees, their employers, and TRS.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendment will be in effect, there will be no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy or local employment because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority.** The amendment is proposed under the following statutes: Texas Government Code §824.601(f), which authorizes TRS to adopt rules necessary for administering Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service; Texas Government Code §824.602(j), which relates to exceptions to loss of benefits on resumption of service and requires the board to adopt rules defining "one-half time basis"; and Texas Government Code §825.102, which authorizes the Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute.** The proposed amendment affects Texas Government Code Chapter 824, Subchapter G, concerning loss of benefits on resumption of service.

*§31.41. Return to Work Employer Pension Surcharge.*

(a) For school years prior to the 2013-2014 school year, for each report month a retiree who retired September 1, 2005 or after is working for a TRS-covered employer (employer) or third party entity in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Reports shall pay the Teacher Retirement System of Texas (TRS) the surcharge described in this section.

(b) ~~[(a)]~~ Beginning September 1, 2013, for ~~[For]~~ each report month a retiree is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month ~~[in a TRS-covered position and reported on the Employment of Retired Members Report]~~, the employer that reports the retiree on the Employment of Retired Members Report shall pay to ~~[the Teacher Retirement System of Texas]~~ TRS ~~[)]~~ a surcharge based on the retiree's salary paid that report month. For purposes of this section, the employer is the reporting entity that reports the employment of the retiree and the criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month ~~[in a TRS-covered position]~~ are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment). A ~~[employment eligible for TRS membership, except that a]~~ retiree reported as a substitute must meet the requirements of §31.1(b) of this title (relating to Definitions) for the surcharge not to apply.

(c) ~~[(b)]~~ The surcharge amount that must be paid by the employer for each retiree working more than the equivalent of four clock hours for each work day in that calendar month ~~[in a TRS-covered position]~~ is an amount that is derived by applying a percentage to the retiree's salary. The percentage applied to the retiree's salary is an amount set by the Board of Trustees and is based on member contribution rate and the state pension contribution rate.

(d) ~~[(c)]~~ The surcharge is due from each employer that reports a retiree as working as described in this section on or after September 1, 2005, beginning with the report month for September 2005.

(e) ~~[(d)]~~ The surcharge is not owed by the employer for any retiree ~~[employed]~~ who retired from the retirement system before September 1, 2005.

(f) ~~[(e)]~~ The surcharge is not owed by the employer for a retiree that is reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless

that retiree combines Substitute Service under §31.13 of this title with other ~~[TRS-covered]~~ employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other ~~[TRS-covered]~~ employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed on all compensation paid to the retiree, including compensation paid for substitute service. If the employment is with more than one employer, the surcharge is owed by each employer on the compensation paid by that employer ~~[by the employer that reports the retiree on all compensation earned by the retiree, including compensation for the substitute service]~~.

(g) ~~[(f)]~~ The surcharge is owed by the employer on any retiree who is working for a third party entity and performing duties or providing services on behalf of the employer for more than the equivalent of four clock hours for each work day in that calendar month ~~[but serving in a TRS-covered position]~~ and who is considered an employee of that employer under §824.601(d) of the Government Code.

(h) ~~[(g)]~~ Except as provided in subsection (f) of this section relating to combining substitute service with other employment, if ~~[(f)]~~ a retiree is employed concurrently in more than one position ~~[that is not eligible for TRS membership]~~, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month ~~[eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment)]~~. If the employment is with more than one employer, the surcharge is owed by each employer.

(i) For school years prior to the 2013-2014 school year, if a retiree is employed concurrently in more than one position that is not eligible for membership, the surcharge is owed if the combined employment is eligible for membership under §25.6 of this title (relating to Part-time or Temporary Employment). If the employment is with more than one employer, the surcharge is owed by each employer.

(j) ~~[(h)]~~ For school years prior to the 2013-2014 school year, if ~~[(h)]~~ a retiree is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge is owed by each employer.

(k) ~~[(i)]~~ For school years prior to the 2013-2014 school year, if ~~[(i)]~~ a retiree is employed in a position eligible for TRS membership, the surcharge is owed by each employer on all subsequent employment with a TRS-covered employer for the same school year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300913

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

## SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

### 34 TAC §41.4

The Teacher Retirement System of Texas (TRS) proposes an amendment to §41.4, relating to the employer health benefit surcharge under TRS-Care. Section 41.4 implements the statutory health benefit surcharge owed by a TRS-covered employer for each month that the employer reports that a retiree enrolled in TRS-Care is working in a position eligible for membership in TRS.

The proposed amendment to §41.4 addresses the requirements for triggering payment of the health benefit surcharge. Currently, a health benefit surcharge is owed by the employer who employs a retiree who retired September 1, 2005 or after and who is working in a TRS-eligible position. Experience with using the standard for one-half time employment for retirees (equivalent of four clock hours for each work day in the calendar month) and the standard for one-half time employment eligible for membership (one-half the full-time load) to trigger payment of the health benefit surcharge revealed confusion on the part of employers, difficulty in communicating the two standards to the employers and retirees, and unanticipated cost to both when the retiree worked one-half time. The proposed amendment will establish the same standard for triggering payment of the surcharge and loss of annuity for exceeding one-half time employment.

The proposed amendment will establish a new standard for triggering payment of the health benefit surcharge by incorporating the limit on one-half time employment after retirement that results in loss of the monthly annuity. 34 TAC §31.14 (relating to One-half Time Employment) establishes the standard for service retirees who can work the equivalent of four clock hours for each work day in the calendar month without forfeiting the annuity for the month. The ratio for converting course credits or semester hours to clock hours is also established. The proposed amendment to §41.4 will incorporate the same standard for triggering payment of the pension surcharge beginning September 1, 2013.

The opening clauses of new §41.4(b), (j), and (k) will address how the rules apply for school years prior to the 2013-2014 school year by following the existing requirements and standard for triggering payment of the health benefit surcharge.

The deletion of references to "TRS-covered employment," a restatement of existing law already specified in §41.4(a), is a non-substantive amendment to §41.4. Other non-substantive amendments are proposed for clarification purposes or to provide accurate internal references.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amendment will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amendment will be in effect, Brian Guthrie, Executive Director of TRS, and Mr. Welch have determined that, the public benefit will be to relieve certain TRS retirees from the burden of submitting the health benefit surcharge information form to their employer and to provide employers with accurate information concerning the surcharge associated with an employed retiree.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amendment will be in effect, there is no foreseeable economic cost to entities or persons required to comply with the proposed amended rule. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority.** The amendment is proposed under the authority of §1575.052, Texas Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

**Cross-reference to Statute.** The proposed amendment affects Chapter 1575 of the Texas Insurance Code, which provides for the establishment and administration of the TRS-Care program.

#### §41.4. *Employer Health Benefit Surcharge.*

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

(b) For school years prior to the 2013-2014 school year, for each report month a retiree is enrolled in the health benefits program (TRS-Care) provided pursuant to the Texas Public School Retired Employees Group Benefits Act and working for an employer or a third party entity as defined in §824.601, Government Code, in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Report shall pay the monthly surcharge described in this section to the Retired School Employees Group Insurance Fund (the Fund).

(c) [(b)] Beginning September 1, 2013, for [För] each report month a retiree is enrolled in TRS-Care and [the health benefits program ("TRS-Care") provided pursuant to the Texas Public School Retired Employees Group Benefits Act, is] working for an employer for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the employment of the retiree [in a TRS-covered position, and is reported] on the Employment of Retired Members Report to TRS [the Teacher Retirement System of Texas ("TRS"), the employer that reports the retiree] shall pay monthly to the Fund [Retired School Employees Group Insurance Fund (the "Fund")] a surcharge established by the Board of Trustees of TRS.

(d) [(e)] The criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month [in a TRS-covered position] are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment) [eligible for TRS membership].

(e) [(d)] The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than the equivalent of four clock hours for each work day in that calendar month [serving in a TRS-covered position,]

and who is considered an employee of that employer under §824.601(d) of the Government Code.

(f) [(e)] The surcharge under [subsection (b) of] this section is not owed:

(1) by an employer for any retiree [employed by that employer] who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other [TRS-covered] employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other [TRS-covered] employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed by each employer as provided in this section.

(g) [(f)] A retiree who is enrolled in TRS-Care, is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month [in a TRS-covered position], and is reported on the Employment of Retired Members Report to TRS shall inform the employer [the identification] of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working more than the equivalent of four clock hours for each work day in that calendar month [in a TRS-covered position] shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

(h) [(g)] If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under [subsection (b) of] this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked [each week] by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

(i) [(h)] If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position [that is not eligible for TRS membership], the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month [eligible for membership under §25-6 of this title]. If the employment is with more than one employer, the surcharge will be paid according to subsection (h) [(g)] of this section by each employer.

(j) [(i)] For school years prior to the 2013-2014 school year, if [H] a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (h) [(g)] of this section by each employer.

(k) [(j)] For school years prior to the 2013-2014 school year, if [H] a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (h) [(g)] of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.

(l) [(k)] The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300914

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

### 34 TAC §47.10

The Teacher Retirement System of Texas (TRS) proposes an amendment to §47.10 of Chapter 47, relating to Qualified Domestic Relations Orders.

Section 47.10 concerns the determination of whether an order is a Qualified Domestic Relations Order (QDRO). A QDRO is a court order that has been reviewed by TRS and found to meet applicable requirements to allow TRS to make direct payment to an alternate payee identified in the order.

TRS proposes an amendment to establish a requirement that domestic relations orders entered by a court on September 1, 2013 or after must be in a form prescribed by TRS. Currently, TRS provides a model order to aid parties in drafting a domestic relations order that meets all of the plan requirements to be a qualified order. Although most orders are based in large part on the model order, many parties include limiting language or additional requirements that are difficult for TRS to administer or require manual administration. TRS received statutory authorization in the last legislative session to require use of a prescribed form. The proposed amendment implements that statutory authority.

Brian Guthrie, TRS Executive Director, estimates that, for each year of the first five years that proposed amendment will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule. By having the requirement that the parties use a form or model prescribed by TRS, programming can be developed to ensure the accurate administration of the order and reduce the amount of staff time required to manually track payments. Also, the amount of staff time required to review and approve or reject orders will also be reduced by the requirement to use a prescribed form.

For each year of the first five years that the proposed amendment will be in effect, Mr. Guthrie has determined that the public benefit will be to enhance the administrative efficiency of TRS and to expedite TRS' approval of submitted domestic relations orders as qualified orders and the resolution of court actions for which they are needed.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed amendment. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Texas Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Texas Government Code.

Comments may be submitted in writing to Brian K. Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be fully considered, written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority.** The amendment is proposed under Texas Government Code §804.003 and §804.005, which authorize TRS to adopt rules relating to QDROs, and Texas Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of business of the board. The amendments also are proposed in conjunction with 26 United States Code §414(p) relating to QDROs and qualified plans.

**Cross-Reference to Statute.** The proposed amendment affects Texas Government Code §804.003, which sets out the requirements for QDROs; and 26 United States Code §414(p), a provision of the Internal Revenue Code relating to QDROs and qualified plans.

*§47.10. Determination of Whether an Order is a Qualified Domestic Relations Order.*

(a) A domestic relations order entered by a court of competent jurisdiction on September 1, 2013 or after must be in a form prescribed by TRS. The form prescribed by TRS must ensure compliance with the requirements in subsection (b) of this section.

(b) For domestic relations orders entered by a court of competent jurisdiction before September 1, 2013, TRS shall apply the statutory criteria to determine whether an order is a QDRO. The following provisions shall also be used in making the determination.

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age. This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early

age retirement at the time of the determination as to whether the order is a QDRO; or

(C) the order reflects that the retiree is, or will be receiving, retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A QDRO may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a QDRO.

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations is not a QDRO. An order that does not allocate a participant's investment in contract may be determined to be a QDRO if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a QDRO.

(12) The order must satisfy the requirements of Internal Revenue Code §414(p)(1)(A)(i) and §414(p)(1)(B).

(13) The order may contain provisions consistent with Government Code §824.1012[, Government Code,] or §824.1013[, Government Code], and TRS may rely on the provisions of the order as though the provisions were included in the decree of divorce or order accepting a property settlement.

(14) The order may specify an alternative method for the parties to verify their Social Security numbers to TRS, if the court finds that omission of the numbers in the order is necessary to reduce the risk of identity theft. The order is not a QDRO if TRS finds that the method of verification is insufficient for the purpose of payment of benefits or reporting of income for tax purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300915

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 542-6438



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES**

##### **SUBCHAPTER J. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)--INTELLECTUAL DISABILITY SERVICES**

##### **40 TAC §§5.451 - 5.458**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter J, §§5.451 - 5.458, concerning preadmission screening and resident review (PASRR) for intellectual disability services, in Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services.

## BACKGROUND AND PURPOSE

The purpose of the repeal is to remove outdated rules from the DADS rule base. New rules regarding the PASRR program are proposed in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1128).

## SECTION-BY-SECTION SUMMARY

The proposed repeal of Subchapter J removes existing PASRR program rules in 40 TAC Chapter 5.

## FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for each year of the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

## SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses.

## PUBLIC BENEFIT AND COSTS

Carol Sloan, DADS Interim Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the subchapter is the removal of outdated rules from the DADS rule base.

Ms. Sloan anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

## TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jamie White at (512) 438-4481 in DADS Access and Intake Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R002A, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R002A" in the subject line.

## STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan

and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Health and Safety Code, §§242.001 - 242.906, which authorizes DADS to license and regulate nursing facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal affects Texas Government Code, §531.0055 and §531.021; Texas Health and Safety Code, §§242.001 - 242.906; and Texas Human Resources Code, §161.021.

§5.451. *Purpose.*

§5.452. *Application.*

§5.453. *Definitions.*

§5.454. *PASARR Determination Process.*

§5.455. *Provision of Specialized Services and Alternate Placement Services.*

§5.456. *Assistance for Applicants Denied Nursing Facility Admission.*

§5.457. *References.*

§5.458. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2013.

TRD-201300905

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 438-4162



## CHAPTER 94. NURSE AIDES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §§94.1 - 94.11 and new §§94.1 - 94.12, in Chapter 94, Nurse Aides.

## BACKGROUND AND PURPOSE

The purpose of the new sections is to clarify existing processes and requirements, reorganize information, and update terminology regarding nurse aides. The current sections of Chapter 94 are proposed for repeal.

The new sections also implement provisions of Senate Bill (SB) 795, 82nd Legislature, Regular Session, 2011 which added §250.0035 to the Texas Health and Safety Code (THSC). THSC §250.0035 requires an applicant to complete 100 hours of training in a Nurse Aide Training and Competency Evaluation Program (NATCEP) to be listed on the nurse aide registry. The current requirement is 75 hours. In addition, THSC §250.0035 requires a nurse aide to complete at least 24 hours of in-service education every two years, including training in geriatrics and, if



applicable, in the care of patients with Alzheimer's disease, to renew the nurse aide's listing on the nurse aide registry.

In addition, the new sections implement provisions of SB 1733, 82nd Legislature, Regular Session, 2011, which amended Chapter 55 of the Texas Occupations Code, by adding §55.004. Section 55.004 requires state agencies to develop alternative licensing procedures for spouses of members of the armed forces under certain circumstances.

#### SECTION-BY-SECTION SUMMARY

New §94.1, Basis, provides the statutory basis for the chapter.

New §94.2, Definitions, provides the definitions of certain terms and phrases used in the chapter.

New §94.3, Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements, provides that a nursing facility that trains nurse aides must offer a NATCEP approved by DADS or contract with another entity that offers a NATCEP. It also describes the requirements for a person to apply and be approved to offer a NATCEP. Effective September 1, 2013, the minimum number of hours a NATCEP must teach is increased from 75 hours to 100 hours. The new section also requires an instructor-to-student ratio in clinical training to be at least one instructor for every 10 students. In addition, the new section requires a NATCEP that provides training to renew a nurse aide's listing on the NAR to include training in geriatrics and, if applicable, the care of residents with Alzheimer's disease.

New §94.4, Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP), describes the requirements for filing an application to offer a NATCEP and for receiving approval from DADS to offer a NATCEP.

New §94.5, Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements, describes the required qualifications and responsibilities of a program director, program instructor, supplemental trainer, and skills examiner.

New §94.6, Competency Evaluation Requirements, describes the requirements for a competency evaluation program, the obligations of a trainee regarding a competency evaluation, the information a trainee must be given regarding a competency evaluation, and requirements related to charges for a competency evaluation.

New §94.7, Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP), describes the process that DADS follows to review and re-approve a NATCEP.

New §94.8, Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP), describes the process that DADS follows to withdraw approval of a NATCEP.

New §94.9, Nurse Aide Registry (NAR) and Renewal, describes the requirements for a nurse aide to be listed on the NAR as having active status. Effective September 1, 2013, this section requires a nurse aide to complete 24 hours of in-service education every two years, including training in geriatrics and, if applicable, the care of residents with Alzheimer's disease to maintain active status on the NAR.

New §94.10, Expiration of Active Status, describes the circumstance under which a nurse aide's status on the NAR is changed from active to expired. Effective September 1, 2013, these circumstances include when a nurse aide has not completed 24 hours of in-service education during the preceding two years.

New §94.11, Waiver, Reciprocity, and Exemption Requirements, describes circumstances under which requirements for a nurse aide being listed as having active status on the NAR are waived or modified. Subsection (d) contains a new provision that allows the spouse of an individual who is serving on active duty as a member of the United States armed forces to be listed on the NAR as having active status if the spouse has been listed on the NAR as having active status within the preceding five years, the spouse's listing on the NAR expired while the spouse was living in another state for at least six months, and the spouse meets other requirements described in the subsection.

New §94.12, Findings and Inquiries, describes DADS procedures for investigating an allegation of abuse, neglect or misappropriation by a nurse aide and for notifying a nurse aide of the results of such an investigation. It also describes the procedures available to a nurse aide to challenge a finding that the nurse aide committed an act of abuse, neglect, or misappropriation of resident property. The section also states that the nurse aide registry is available to the public and that DADS will make certain information available in response to an inquiry about a nurse aide's status on the NAR.

#### FISCAL NOTE

David Cook, DADS Interim Chief Financial Officer, has determined that, for the first five years the new sections and repeals are in effect, enforcing or administering the new sections and repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the new sections and repeals may have an adverse economic effect on small businesses or micro-businesses, because the additional training hours are mandatory and nurse aide training programs may incur a cost associated with the additional hours of training.

The number of small businesses or micro-businesses subject to the proposed new sections and repeals cannot be determined. DADS does not maintain records of the number of employees in nursing facilities or in nurse aid training programs and, therefore, cannot determine the number of these entities considered a small or micro-business. There are, however, approximately 247 facility-based nurse aide training programs.

No alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses or micro-businesses because the increased hours of training are required by legislation.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years new sections and repeals are in effect, the public benefit expected as a result of enforcing the new sections and repeals is increased training hours for nurse aides which should improve the quality of care to residents in nursing facilities. Ms. Durden anticipates that there will be an economic cost to persons who are required to comply with the new sections and repeals. The probable economic cost to persons required to comply with the new sections and repeals for each year of the first five years the new sections and repeals are in effect will be approximately \$111,541. DADS currently reimburses nursing facility-based training providers for the cost of training nurse

aides. It is estimated that the current reimbursement is approximately \$338,004 per year. It is assumed that nursing facilities with an approved nurse aide training program will incur the cost of an increase from 75 hours of training to 100 hours of training, which is an increase of 33 percent; therefore, the increase in training hours will cost nursing facility-based nurse aide training programs approximately \$111,541 annually. It is also estimated that there may be an impact on the cost of tuition for nurse aide students who attend non-facility based nurse aide training programs. Non-facility based nurse aide training programs set their own fees; therefore, DADS is unable to estimate the cost for a trainee to attend a non-facility based nurse aide training program. The new sections and repeals will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-12R02, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st Street, Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 12R02" in the subject line.

#### 40 TAC §§94.1 - 94.11

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeals affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§94.1. *Basis.*

§94.2. *Definitions.*

§94.3. *Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.*

§94.4. *Competency Evaluation Program (CEP) Requirements.*

§94.5. *Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.*

§94.6. *Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

§94.7. *Approval, Reapproval, and Inspection of a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

§94.8. *Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).*

§94.9. *Waiver, Reciprocity, and Exemption Requirements.*

§94.10. *Registry, Findings, and Inquiries.*

§94.11. *Requirements for Recertification.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2013.

TRD-201300920

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 438-3734



#### 40 TAC §§94.1 - 94.12

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§94.1. *Basis.*

The chapter implements the requirements for training and evaluating the competency of nurse aides employed in nursing facilities that participate in Medicaid, Medicare, or both, and for maintaining a registry of nurse aides, required by §1819(b)(5) and §1919(b)(5) of the Social Security Act; the Code of Federal Regulations, Title 42, §§483.150-483.154; and Texas Health and Safety Code, Chapter 250.

§94.2. *Definitions.*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(4) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(5) Competency evaluation application--A DADS form used to request DADS approval to take a competency evaluation.

(6) Curriculum--The publication titled *Texas Curriculum for Nurse Aides in Long Term Care Facilities* developed by DADS.

(7) DADS--The Texas Department of Aging and Disability Services.

(8) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(9) Employee misconduct registry (EMR)--The registry maintained by DADS in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(10) Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(11) Facility-based NATCEP--A NATCEP offered by or in a facility.

(12) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(13) Informal review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct made by DADS by providing testimony and supporting documentation to an impartial DADS staff person.

(14) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
- (B) a physician assistant;
- (C) a physical, speech, or occupational therapist;
- (D) a physical or occupational therapy assistant;
- (E) a registered nurse;
- (F) a licensed vocational nurse; or
- (G) a licensed social worker.

(15) Licensed nurse--A registered nurse or licensed vocational nurse.

(16) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(17) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(18) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(19) Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(20) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(21) Nurse aide registry (NAR)--A state listing of nurse aides that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(22) Nurse aide training and competency evaluation program (NATCEP)--A program approved by DADS to train and evaluate an individual's ability to work as a nurse aide in a facility.

(23) Nurse aide training and competency evaluation program (NATCEP) application--A DADS form used to request DADS initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request DADS approval of changed information in an approved NATCEP application.

(24) Nursing services--Services provided by nursing personnel that include, but are not limited to:

- (A) promotion and maintenance of health;
- (B) prevention of illness and disability;
- (C) management of health care during acute and chronic phases of illness;
- (D) guidance and counseling of individuals and families; and
- (E) referral to other health care providers and community resources when appropriate.

(25) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(26) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(27) Program director--An individual who is approved by DADS and meets the requirements in §94.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(28) Program instructor--An individual who is approved by DADS to conduct the training in a NATCEP and who meets the requirements in §94.5(b) of this chapter.

(29) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(30) Resident--An individual accepted for care or residing in a facility.

(31) Skills examiner--An individual who is approved by DADS and meets the requirements in §94.5(d) of this chapter.

(32) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§94.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a facility must apply for and obtain approval from DADS to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with DADS.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each classroom location.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) DADS does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to DADS in accordance with §94.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. DADS may withdraw the application within two years of approving it if DADS determines that the facility is no longer prohibited from offering a NATCEP.

(h) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:

(1) 51 hours of classroom training; and

(2) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(i) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(j) A NATCEP must teach the curriculum established by DADS and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with dementia (Alzheimer's disease and others);

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain DADS approval. The program director and program instructor must meet the requirements of §94.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP;

(m) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor;

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(n) A NATCEP must submit a NATCEP application to DADS if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until DADS approves the change. DADS conducts a review of the NATCEP information if DADS determines the changes are substantive.

(o) A NATCEP must use a DADS performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(p) A NATCEP must maintain records and make them available to DADS or its designees at any reasonable time. The records must include:

(1) dates and times of all classroom and clinical training;

(2) full name and social security number of a trainee;

(3) attendance record of a trainee;

(4) final course grade for the training portion of the NATCEP that indicates pass or fail for a trainee; and

(5) daily sign-in records for classroom and clinical training.

(q) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(r) DADS reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(s) DADS must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(t) DADS approval of a NATCEP only applies to the required curriculum and hours. DADS does not approve additional content or hours.

(u) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(v) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and, if applicable, the care of residents with Alzheimer's disease.

§94.4. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A person that wants to offer a NATCEP must complete a NATCEP application on forms prescribed by DADS and submit the application to DADS.

(b) DADS determines whether to approve or deny the NATCEP application.

(c) Within 90 days after DADS receives a complete NATCEP application, DADS notifies a NATCEP applicant of approval or proposed denial of a NATCEP application, or notifies the applicant of a deficiency or error in accordance with subsection (d) of this section. If DADS proposes to deny the application due to the applicant's non-compliance with the requirements of the Act or this chapter, DADS provides the reason for the denial in the notice.

(d) If DADS finds a deficiency or error in a NATCEP application, DADS notifies the applicant in writing of the deficiency or error and gives the applicant an opportunity to correct the deficiency or error. The applicant must submit the additional or corrected information to DADS, in writing, within 10 days after the applicant receives notice of the deficiency or error.

(e) If DADS proposes to deny a NATCEP application based on the NATCEPs failure to comply with §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements), or §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant may request a hearing to challenge the denial. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If an applicant does not make a timely request for a hearing, the applicant waives a hearing and DADS may deny the NATCEP application.

§94.5. Program Director; Program Instructor; Supplemental Trainers, and Skills Examiner Requirements.

(a) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain DADS approval.

(1) The program director must:

(A) be an RN in the state of Texas;

(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a facility; and

(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing (DON) for the facility may be approved as the program director, but must not conduct the training.

(3) A program director may supervise more than one NATCEP.

(4) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed the training portion of the NATCEP;

(E) signing an competency evaluation application completed by a trainee who has passed the training portion of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the facility, stating that the trainee passed the training portion of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with DADS.

(5) A NATCEP must submit a NATCEP application for DADS approval if the program director of the NATCEP changes.

(b) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by DADS in accordance with §94.7 of this chapter and when training occurs.

(1) A program instructor must:

(A) be a licensed nurse;

(B) have a minimum of one year of nursing experience in a facility;

(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and

(D) work under the general supervision of the program director or be the program director.

(2) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(3) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in paragraph (1)(A) - (D) of this subsection.

(4) A NATCEP must submit a NATCEP application for DADS approval if a program instructor of the NATCEP changes.

(c) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without DADS approval. To request approval, a NATCEP must submit a NATCEP application to DADS.

(d) Skills examiner. A skills examiner must administer a competency evaluation.

(1) DADS or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by DADS or its designee.

(2) A skills examiner must:

(A) adhere to DADS standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by DADS;

(C) validate competency evaluation results on forms prescribed by DADS;

(D) submit prescribed forms and reports to DADS or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§94.6. Competency Evaluation Requirements.

(a) A skills examiner must administer a competency evaluation.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §94.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the location where the trainee received training, the trainee may take a competency evaluation at another approved NATCEP that offers the competency evaluation and accepts the trainee for a competency evaluation.

(d) An eligible trainee who does not take a competency evaluation at the location where the trainee received training must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange with another approved NATCEP to take the competency evaluation and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;

(2) offer an competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP;

(3) administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;

(4) schedule a competency evaluation; and

(5) ensure that trainees accurately complete competency evaluation applications.

(f) A trainee must:

(1) take an competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for competency evaluations;

(3) complete a competency evaluation application and submits the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by DADS or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete a NATCEP, a trainee must pass:

(1) the skills demonstration, as determined by DADS; and

(2) the written or oral examination, as determined by DADS.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) DADS informs a trainee before taking a competency evaluation that DADS records successful completion of the competency evaluation on the NAR.

(l) DADS records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §94.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A facility must not charge a nurse aide for any portion of a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide takes the competency evaluation.

(o) DADS reimburses a nurse aide for a portion of the costs incurred by the nurse aide to take a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after taking the competency evaluation.

§94.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A NATCEP must apply to have its approval renewed every two years. DADS sends a notice of renewal to a NATCEP at least 60 days before the expiration date of an approval.

(b) A NATCEP must submit a NATCEP application at least 30 days before the expiration date of an approval. If a NATCEP does not file an application to renew an approval at least 30 days before the expiration of the approval, the approval expires.

(c) DADS uses the results of an on-site visit to determine NATCEP compliance with the Act and this chapter and to decide whether to renew the approval of a NATCEP.

(d) DADS may conduct an on-site review of a NATCEP at any reasonable time.

(e) DADS provides written notification to a NATCEP of deficiencies found during an on-site review.

(1) If a NATCEP receives a notification of deficiencies from DADS, the NATCEP must submit a written response to DADS, which must include a plan of correction (POC) to correct all deficiencies.

(2) DADS may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) DADS may not renew the approval of a NATCEP that does not meet the requirements of the Act and this chapter by failing to provide an adequate POC.

(f) A NATCEP approved by DADS may provide in-service education to a nurse aide that is necessary to have a listing on the NAR renewed.

(g) A NATCEP must receive approval or an exemption under Texas Education Code Chapter 132 (relating to Career Schools and Colleges).

§94.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) DADS immediately withdraws approval of a facility-based NATCEP if the facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i)) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than \$5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by DADS.

(b) DADS withdraws approval of a NATCEP if the NATCEP does not comply with §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If DADS withdraws approval of a NATCEP for failure to comply with §94.3 of this chapter, DADS does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If DADS proposes to withdraw approval of a NATCEP based on subsection (a) of this section, DADS notifies the NATCEP by certified mail of the facts or conduct alleged to warrant the withdrawal. DADS mails the notice to the facility's last known address as shown in DADS records.

(e) A dually certified facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 Code of Federal Regulations (CFR), Part 498.

(f) A facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act), except the facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by DADS is overturned, DADS rescinds the denial of approval of the NATCEP.

(i) If DADS proposes to withdraw approval of a NATCEP based on §94.3 of this chapter or §94.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and DADS may withdraw the approval.

(j) A trainee who started a NATCEP before DADS sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

§94.9. Nurse Aide Registry and Renewal.

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §94.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) DADS does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform DADS of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a DADS Employment Verification form to DADS that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a DADS Employment Verification form to DADS to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.



(3) Effective September 1, 2013, a nurse aide must complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, the care of residents with Alzheimer's disease to renew a listing of active status on the NAR.

(4) In-service education for renewal of a listing on the NAR must be completed in a facility or an approved NATCEP.

§94.10. Expiration of Active Status.

(a) A nurse aide's status on the NAR is changed to expired if:

(1) the nurse aide has not performed nursing related services or acted as a nurse aide for monetary compensation for 24 consecutive months; or

(2) effective September 1, 2013 the nurse aide has not completed 24 hours of in-service education during the preceding two years.

(b) A nurse aid whose status is listed as expired must complete a NATCEP or a competency evaluation to be listed on the NAR with active status.

§94.11. Waiver, Reciprocity, and Exemption Requirements.

(a) DADS may waive the requirement for a nurse aide to take the NATCEP specified in §94.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and place a nurse aide on the NAR on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989;

(2) submits a DADS Employment Verification form to DADS to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) completes the DADS Waiver of Nurse Aide Training and Competency Evaluation Program form.

(b) DADS places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) the nurse aide completes a DADS Reciprocity form and submits it to DADS.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §94.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §94.9 of this chapter (relating to Nurse Aide Registry and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months, and:

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in subsection (c)(1) of this section;

(5) arranges for a facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from DADS authorizing the person to take the competency evaluation.

(d) In accordance with Texas Occupations Code §55.004, the spouse of a person serving on active duty as a member of the United States armed forces may be listed on the NAR as having active status if:

(1) the spouse was listed on the NAR as having active status during the preceding five years;

(2) the spouse's listing on the NAR expired while the spouse lived in another state for at least six months;

(3) the spouse is not listed as unemployable on the EMR;

(4) the spouse is not listed as having revoked or suspended status on the NAR;

(5) the spouse has not been convicted of a criminal offense listed in THSC, §250.006(a), or a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(6) there has not been a period of 24 consecutive months in which the spouse did not provide nursing or nursing-related services for monetary compensation.

§94.12. Findings and Inquiries.

(a) DADS reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide employed in a facility. If DADS finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the NAR, DADS provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If DADS finds that a nurse aide committed an act of abuse, neglect or misappropriation of resident property, DADS sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute DADS findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information for the local DADS regional office, where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, DADS sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect, or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to an impartial DADS staff person at the local DADS regional office.

(1) If the staff person does not uphold the findings, DADS notifies the nurse aide of the results of the IR and closes the investigation. DADS does not record information related to the investigation in the NAR.

(2) If the staff person upholds the findings, DADS notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, DADS upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of DADS notice of the results of an IR described in subsection (c)(2) of this section. 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of DADS notice in compliance with 42 CFR §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and DADS enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If DADS receives an allegation that a nurse aide, who has a medication aide permit under Chapter 95 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, neglect, or misappropriation of resident property, DADS investigates the allegation under this section regarding the nurse aide practice and under Chapter 95 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If DADS finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, DADS reports the finding to:

(1) the NAR;

(2) the nurse aide;

(3) the administrator of the facility in which the act occurred; and

(4) the administrator of the facility that employs the nurse aide, if different from the facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR, as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, DADS must:

(1) verify if the nurse aide is listed on the NAR;

(2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and

(3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a facility and is listed as unemployable in the EMR, DADS changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the EMR satisfies the due process required before DADS changes the nurse aide's status on the NAR.

(k) If DADS lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that DADS remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a DADS Petition for Removal of Neglect Finding to DADS in accordance with the petition's instructions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 28, 2013.

TRD-201300921

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 438-3734



## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 5. FINANCE**

##### **SUBCHAPTER H. TRANSPORTATION**

##### **DEVELOPMENT CREDIT PROGRAM**

##### **43 TAC §5.107, §5.109**

The Texas Department of Transportation (department) proposes amendments to §5.107 and §5.109, concerning the transportation development credit program.

##### **EXPLANATION OF PROPOSED AMENDMENTS**

The Texas Transportation Commission (commission) adopted 43 TAC Chapter 5, Subchapter H, in September 2012 to establish a more efficient process for allocating, awarding, and administering transportation development credits. Since that time, the department has determined that minor amendments are required to clarify the rules and provide more flexibility with regard to the award of credits under certain circumstances.

Amendments to §5.107, Award by Commission, clarify the process by which the commission will allocate transportation development credits to support public transit projects. For each fiscal year the minimum number of credits available shall be equal to the lesser of 15 million credits or fifty percent of the total number of credits available for award by the commission on the 1st day of that fiscal year. This revision will eliminate the potential for confusion regarding the allocation process by specifying the minimum balance that will be available each year.

Amendments to §5.109, Discretionary Award, authorize the commission to allocate a lump sum of transportation development credits to the department for use on a program or category of projects which support a department goal or initiative. The individual projects, and the exact amount of credits to be used for each project, need not be specified at the time of allocation. The department will award the credits on behalf of the commission using the same criteria that the commission would consider in making an award. This revision will enable the department to utilize credits in a manner that maximizes federal funds on eligible projects.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Brian Ragland, Director, Finance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Ragland has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarity with regard to the policies and procedures related to the allocation, award, and administration of transportation development credits. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §5.107 and §5.109 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@tx-dot.gov with the subject line "5.107 and 5.109." The deadline for receipt of comments is 5:00 p.m. on April 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

23 U.S.C. §120.

§5.107. *Award by Commission.*

(a) Process. The commission will award the transportation development credits that are not locally earned credits and the state's locally earned credits that are not allocated to MPOs under §5.105 of this subchapter (relating to Regional Allocation). The commission will make the awards:

(1) using the competitive process described in §5.108 of this subchapter (relating to Competitive Process); or

(2) in its sole discretion subject to §5.109 of this subchapter (relating to Discretionary Award).

(b) Allocation for public transit projects. The [For each fiscal year the] commission will allocate for award by the commission an amount of transportation development credits that may be used [during that fiscal year] only to support public transit projects. For each fiscal year the [The] minimum number of credits available [allocated] under this subsection shall be [is] equal to the lesser of 15 million credits or fifty percent of the total number of credits available for award by the commission on the 1st day of that fiscal year. The allocation under this subsection is not intended to set the maximum number of credits that may ultimately be awarded for public transit projects under this subchapter during that fiscal year.

§5.109. *Discretionary Award.*

(a) In making an award solely in its discretion, the commission will consider:

(1) the potential of a project to expand the availability of funding for transportation projects, based on the goals specified in §5.102 of this subchapter (relating to Program Goals); and

(2) if the project is located within the planning boundaries of an MPO, the expressed opinion, if any, of the MPO.

(b) The commission may allocate a lump sum of transportation development credits to the department for use on a program or category of projects which support a department goal or initiative. The individual projects, and the exact amount of credits to be used for each project, need not be specified at the time of the allocation. The department will award the credits on behalf of the commission after considering the potential of the project to expand the availability of funding for transportation projects, based on the goals specified in §5.102 of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300923

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 463-8683

◆ ◆ ◆

## CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

### SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

#### 43 TAC §9.40

The Texas Department of Transportation (department) proposes new §9.40, concerning procurement of architectural, engineering, or surveying services under a pilot program.

#### EXPLANATION OF PROPOSED NEW SECTION

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and implemented through Chapter 9, Subchapter C, Contracting for Architectural, Engineering, and Surveying Services. New §9.40 allows the executive director or the executive director's designee to authorize the execution of an engineering, architecture, or surveying contract that does not comply with Subchapter C, as long as the authorization is in writing and the procurement resulting in the contract provides a fair opportunity for qualification-based competition, was conducted as part of a Texas Transportation Commission (commission) approved pilot project, and the contract does not violate any statute or include federal funding.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Lauren Garduno, Chief Procurement Officer and Deputy Administrative Officer, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

#### PUBLIC BENEFIT AND COST

Mr. Garduno has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be improving the efficiency and fairness of the qualification-based procurement process. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed new §9.40 may be submitted to Robin Carter, Office of General Counsel, Texas Department of

Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "9.40." The deadline for receipt of comments is 5:00 p.m. on April 15, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed new section, or is an employee of the department.

#### STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

None.

#### §9.40. Contract Under a Pilot Program.

(a) This section provides an exception to the selection requirements provided by other provisions of this subchapter for the procurement of architectural, engineering, or surveying services under a pilot project approved by the commission for the purposes of improving the efficiency and fairness of the department's qualifications-based procurement processes.

(b) The executive director or the executive director's designee may authorize the execution of an engineering, architecture, or surveying contract under this section. The authorization must be in writing and must contain findings that:

(1) the procurement resulting in the contract:

(A) does not violate state or federal law;

(B) provided a fair opportunity for qualification-based competition; and

(C) was conducted as part of the pilot project described by subsection (a) of this section;

(2) the contract does not expend federal funds; and

(3) execution of the contract is in the public interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300924

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: April 14, 2013

For further information, please call: (512) 463-8683

◆ ◆ ◆

# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## **TITLE 10. COMMUNITY DEVELOPMENT**

### **PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### **CHAPTER 10. UNIFORM MULTIFAMILY RULES**

##### **SUBCHAPTER C. APPLICATION SUBMIS- SION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES**

###### **10 TAC §10.208**

The Texas Department of Housing and Community Affairs withdraws proposed new §10.208 which appeared in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7355).

Filed with the Office of the Secretary of State on February 28, 2013.

TRD-201300919

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: February 28, 2013

For further information, please call: (512) 475-3916



## **TITLE 22. EXAMINING BOARDS**

### **PART 9. TEXAS MEDICAL BOARD**

#### **CHAPTER 161. GENERAL PROVISIONS**

###### **22 TAC §161.3**

The Texas Medical Board withdraws the emergency amendment to §161.3 which appeared in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10067).

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300883

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 18, 2013

For further information, please call: (512) 305-7016



## **TITLE 30. ENVIRONMENTAL QUALITY**

### **PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **CHAPTER 339. GROUNDWATER PROTECTION RECOMMENDATION LETTERS AND FEES**

###### **30 TAC §§339.1 - 339.3**

Proposed repeal of §§339.1 - 339.3, published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6526), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on February 28, 2013.

TRD-201300917



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §354.1430, concerning Definitions, and §354.1432, concerning Benefits and Limitations; and new §354.1430, concerning Definitions, and §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations, without changes to the proposed text as published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9057) and will not be republished.

##### Background and Justification

Senate Bill (S.B.) 293, 82nd Legislature, Regular Session, 2011, requires HHSC to expand services provided by use of advanced telecommunications services. S.B. 293 changes the definition of telemedicine to allow providers of telemedicine services to be persons who are acting under physician delegation and supervision. The bill also creates a new telehealth benefit, which is similar to telemedicine, but it allows providers who are licensed or certified health professionals, acting within the scope of their license or certification, to participate. The adopted rules reflect new definitions and benefits described in the bill, as well as definitions that clarify terms used in the new rules.

##### Comments

The 30-day public comment period ended December 17, 2012. During this period, HHSC received comments regarding proposed new §354.1430 and §354.1432 from Texas Tech University Health Sciences Center, the Texas Association for Home Health Care and Hospice, and Providence Services Corporation. A summary of the comments and HHSC's responses follow.

Comment: Each commenter supported the deletion of the requirement in §354.1430 for the client to be in a rural or underserved area. This deletion will improve access to care.

Response: HHSC recognizes and appreciates the comment. Because existing §354.1430 was repealed and the proposed new rules do not contain a requirement for the client to be in a rural or underserved area, no changes were made as a result of this comment.

Comment: A commenter suggested the need for a study to compare the costs for a client to receive services through

telemedicine to the cost of transporting the same client to a distant location for the same services.

Response: HHSC has considered such a study but determined that the needed data and resources are not available. No changes were made as a result of this comment.

Comment: Two commenters stated that the definitions for established health site and established medical site in new §354.1430 should allow a client to receive services through telemedicine in the client's home. Clients who would benefit from this change are chronically ill, frail elderly, and special needs pediatric clients who require significant effort and expense to access services outside of their home.

Response: HHSC appreciates the comment. HHSC recognizes that there are clients who have difficulties leaving home to access services and have other obstacles getting certain providers to come to their home. No changes were made as a result of this comment; however, HHSC will refer this issue for future consideration.

#### DIVISION 33. TELEMEDICINE SERVICES

##### 1 TAC §354.1430, §354.1432

##### Legal Authority

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0216, which requires the Executive Commissioner of HHSC to adopt rules to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300943

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 1, 2013

Proposal publication date: November 16, 2012

For further information, please call: (512) 424-6900



## DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

### 1 TAC §354.1430, §354.1432

#### Legal Authority

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.0216, which requires the Executive Commissioner of HHSC to adopt rules to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300944

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 1, 2013

Proposal publication date: November 16, 2012

For further information, please call: (512) 424-6900



## CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

### 1 TAC §355.7001

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.7001, concerning Reimbursement Methodology for Telemedicine and Telehealth Services, without changes to the proposed text as published in the December 21, 2012, issue of the *Texas Register* (37 TexReg 9843) and will not be republished.

#### Background and Justification

The adopted amendment allows reimbursement to additional health care professionals for telemedicine and telehealth services. Additionally, the title of Subchapter G is changed from "Telemedicine and Other Community-Based Services" to "Advanced Telecommunications Services and Other Community-Based Services" and the title of §355.7001 is changed from "Telemedicine Services Reimbursement" to "Reimbursement Methodology for Telemedicine and Telehealth Services."

The amendment aligns the reimbursement methodology rule with adopted amendments to HHSC rules concerning the telemedicine and telehealth program in Chapter 354, Subchapter A, Division 33, Advanced Telecommunications Services, §354.1430, Definitions, and §354.1432, Telemedicine and Telehealth Benefits and Limitations. The adopted amendments to the program rules, as required under Senate Bill 293, 82nd

Legislature, Regular Session 2011, are adopted elsewhere in this issue of the *Texas Register*.

#### Comments

The 30-day comment period ended January 20, 2013. During this period, HHSC did not receive any comments regarding the proposed amendment to this rule.

#### Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements, and §531.0216, which requires HHSC to adopt rules to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine or telehealth services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300945

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 1, 2013

Proposal publication date: December 21, 2012

For further information, please call: (512) 424-6900



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 161. GENERAL PROVISIONS

##### 22 TAC §161.3

The Texas Medical Board (Board) adopts an amendment to §161.3, concerning Organization and Structure, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10073) and will not be republished.

The amendment establishes that board members may not appear at disciplinary or licensure hearings on behalf of licensure applicants or licensees and may not submit a written statement on behalf of a licensee or applicant unless the member receives preapproval from the board's executive committee.

Elsewhere in this issue of the *Texas Register*, the Board withdraws §161.3, which was filed on an emergency basis in the December 28, 2012, issue of the *Texas Register*. The withdrawal is effective simultaneously with the effective date of the permanent adoption of §161.3.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300884

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 18, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 305-7016



## CHAPTER 163. LICENSURE

### 22 TAC §163.2

The Texas Medical Board (Board) adopts amendments to §163.2, concerning Full Texas Medical License, with changes to the proposed text as published in the January 11, 2013, issue of the *Texas Register* (38 TexReg 223). The text of the rule will be republished.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on November 16, 2012. The comments were incorporated into the proposed rules.

The amendments permit applicants who graduated from U.S. medical schools that were not LCME-accredited at time of graduation to remain eligible for licensure if board certified; and clarify that residency training will not be counted toward the three-year service requirement for foreign medical school graduates that are not U.S. citizens or aliens lawfully admitted for permanent residence, unless the residency training was in a medically underserved area or health professional shortage area.

The Board received comments regarding §163.2 from the Methodist Hospital System.

The Methodist Hospital System commented that the proposed version of §163.2 changed the language related to an exemption for certain licensure applicants which originally allowed applicants to apply for a license "to practice medicine at an institution that maintained a graduate medical training program." The Methodist Hospital System opined that the proposed language, which limited the exemption to applicants who have "been offered employment at a graduate medical training program.", was inconsistent with the language in Senate Bill 189 from 82nd Legislature and problematic.

The Board has responded to this comment by agreeing that the proposed language should be changed. The proposed language as published did not reflect the Board's intent and was the result of a drafting error. Accordingly the Board modified and adopted the following non-substantive change at its February 9, 2013 meeting.

### Section 163.2(d)(5)(A):

(A) applicants for full licensure under this chapter who have been offered employment at an institution that maintains a graduate medical education program in this state, and:

(i) the employment is not for the purpose of obtaining postgraduate training; or

(ii) the employment is for postgraduate training that is located in a MUA or HPSA.

The Board believes that this revision will satisfy the concerns expressed by this comment.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

### §163.2. Full Texas Medical License.

(a) Graduates of medical schools in the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school in the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title (relating to Definitions);

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) be a graduate of:

(A) an acceptable approved medical school as defined under §163.1(1) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(5) have successfully completed a one-year training program of graduate medical training in the United States or Canada as defined under §163.1(9) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6(a) of this title (relating to Examinations Accepted for Licensure); and

(7) pass the Texas Medical Jurisprudence Examination.

(b) Graduates of medical schools outside the United States or Canada. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

(1) be 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) be a graduate of:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a



certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(5) have successfully completed a two-year training program of graduate medical training in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6 of this title;

(7) pass the Texas Medical Jurisprudence Examination;

(8) possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(9) have the ability to communicate in the English language; and

(10) have supplied all additional information that the board may require concerning the applicant's medical school.

(c) Fifth Pathway Program. To be eligible for licensure, an applicant who has completed a Fifth Pathway Program must:

(1) be at least 21 years of age;

(2) be of good professional character as defined under §163.1(8) of this title;

(3) have completed 60 semester hours of college courses as defined under §163.1(10) of this title;

(4) hold a certificate from:

(A) an acceptable unapproved medical school as defined under §163.1(2) of this title; or

(B) any medical school and at the date of application to the Board or prior to approval for licensure by the Board hold a certificate from a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(5) have successfully completed a two-year training program of graduate medical education in the United States or Canada as defined under §163.1(13) of this title;

(6) submit evidence of passing an examination, that is acceptable to the board for licensure;

(7) pass the Texas Medical Jurisprudence Examination;

(8) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(9) have attained a passing score on the ECFMG examination;

(10) have the ability to communicate in the English language;

(11) have attained a satisfactory score on a qualifying examination and have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program) in a United States medical school; and

(12) have supplied all additional information that the board may require, concerning the applicant's medical school, before approving the applicant.

(d) Applicants who are not U.S. citizens or permanent residents.

(1) An applicant for full licensure who is not a U.S. citizen or an alien lawfully admitted for permanent residence in the United States, must present proof satisfactory to the board that the applicant has practiced medicine full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years, or has signed an agreement to practice medicine full-time in Texas, in medically underserved areas (MUAs) and health professional shortage areas (HPSAs) as designated by the U.S. Department of Health and Human Services, for at least three years. Full-time practice shall mean at least 20 hours per week for 40 weeks duration during a given year. Agreement to practice medicine for three years in qualifying HPSAs and MUAs may be evidenced by an Affidavit of Agreement submitted by the applicant to the Board.

(2) Upon completion of the requirements of paragraph (1) of this subsection, a physician must provide documentation that is acceptable to the Board to demonstrate compliance with paragraph (1) of this subsection. Documentation acceptable to the Board as proof of having completed the three-year service requirement includes:

(A) Individual Federal income tax returns, including copies of the International Medical Graduate's (IMG) W-2 forms and/or pay stubs covering the three-year period (showing employment in a qualifying underserved location);

(B) Letter(s) from the applicant's employer(s) attesting to the full-time medical service rendered during the required aggregate period; and

(C) If the applicant established his or her own practice, documents confirming establishment of the practice, e.g., documentation showing incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire three-year period.

(3) A physician licensed under this subsection, must notify any individual or entity with whom the physician contracts to practice medicine, that the physician is fulfilling a service requirement to practice full-time in Texas, in medically underserved areas and health professional shortage areas as designated by the U.S. Department of Health and Human Services, for at least three years.

(4) For the purpose of this subsection, federally designated underserved areas include Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) with facility HPSA designation.

(5) This subsection shall not be interpreted to apply to:

(A) applicants for full licensure under this chapter who have been offered employment at an institution that maintains a graduate medical training program in this state, and:

(i) the employment is not for the purpose of obtaining postgraduate training; or

(ii) the employment is for postgraduate training that is located in a MUA or HPSA;

(B) applicants for postgraduate training permits as described under Chapter 171 of this title (relating to Postgraduate Training Permits);

(C) applicants for temporary or limited licenses as described under Chapter 172 of this title (relating to Temporary and Limited Licenses);

(D) physicians who practiced medicine, prior to September 1, 2012, for at least one year under a postgraduate training permit, temporary license, or limited license; or

(E) physicians who had an active application for full licensure on August 31, 2012.

(6) Applicants determined exempt under paragraph (5)(B) of this subsection and who subsequently apply for full licensure are subject to the requirements of this subsection, and any employment completed while in postgraduate training shall not be applied toward the requirements set out in paragraph (1) of this subsection unless the training program was located in an MUA or HPSA.

(7) Applicants determined exempt under paragraph (5)(A) of this subsection at time of application, but who subsequently discontinue employment before passage of three years from the date of issuance of a license, shall no longer be exempt from the requirements set out in this section. However, the applicant may count all employment obtained while practicing medicine under a full license or a temporary or limited license at an institution that maintains a graduate medication education program in this state toward the service requirement set out in paragraph (1) of this subsection.

(e) Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted medical license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical license; or

(B) within the five years preceding the application date held a medical license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under this subsection shall be expedited by the board's licensure division as if they meet the provisions of §163.13 of this title (relating to Expedited Licensure Process).

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:

(A) are not required to comply with §163.7 of this title (relating to Ten Year Rule); and

(B) in demonstrating compliance with §163.11(a) of this title (relating to Active Practice of Medicine), must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within one of the last three years preceding receipt of an Application for licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300885

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 18, 2013

Proposal publication date: January 11, 2013

For further information, please call: (512) 305-7016



## CHAPTER 187. PROCEDURAL RULES

### SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

#### 22 TAC §187.44

The Texas Medical Board (Board) adopts an amendment to §187.44, concerning Probationer Show Compliance Proceedings, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10075) and will not be republished.

The amendment establishes a five calendar day deadline for probationer rebuttal material.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §164.003 and §164.010, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300886

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 18, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 305-7016



## CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

#### 22 TAC §192.1, §192.2

The Texas Medical Board (Board) adopts amendments to §192.1, concerning Definitions, and §192.2, concerning Provision of Anesthesia Services in Outpatient Settings, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10076) and will not be republished.

The amendments to §192.1 revise the definitions for analgesics, anesthesia, anesthesia services, anxiolytics, Level IV services,

and monitored anesthesia care and add definitions for hypnotics, peripheral nerve block and tumescent anesthesia. The Board has determined that the result of enforcing this section will be to enhance safety standards for office-based anesthesia procedures.

The amendments to §192.2 revise the requirements for Level I, II, and III services, for necessary emergency equipment, and reporting to the board of intraoperative and postoperative deaths. The Board has determined that the result of enforcing this section will be to enhance safety standards for office-based anesthesia procedures.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on July 20, 2012. The comments were incorporated into the proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on February 8, 2013, regarding §192.1.

The Board received comments regarding §192.2 from the Texas Society of Anesthesiologists (TSA) and the Texas Association of Nurse Anesthetists (TANA).

#### COMMENT NO. 1

TSA commented that it supports the proposed amendments to Board Rule 192 and asked the Board to adopt them at the earliest possible date.

#### COMMENT NO. 2

TANA commented through written comments and by appearing at the February 8, 2013 Board meeting, as shown below.

1. Office-based anesthesia rules should not require physicians who are not anesthesiologists comply with American Society of Anesthesiologists (ASA) standards and that references to ASA standards send an anti-competitive message to office-based surgeons.
2. ASA Standards for Preanesthesia Care require that an anesthesiologist be responsible for determining the medical status of the patient, developing the anesthesia plan, and be responsible for all six other items listed in the ASA standard.
3. ASA Standards for Postanesthesia Care require that postanesthesia functions be performed by an anesthesiologist.
4. That references to the ASA standards within §192.2 are not within the statutory authority of the Board because such references would require certified nurse anesthetists (CRNAs) to perform services as specified in ASA standards and guidelines. The Association further commented that the relevant standards for CRNAs regarding the provision of outpatient anesthesia are set out in 22 TAC §221.16.
5. That it is not proper to exclusively reference ASA Standards for Postanesthesia Care, because an anesthesiologist might not be involved in the provision of outpatient anesthesia. As alternative language for §192.2(c)(3)(E), the Association suggested "adherence to accepted national standards for postanesthesia care."
6. TANA objects to the requirement that pre-sedation assessments must include "an ASA physical status classification."

The Board disagrees with this comment. The Board believes that §192.2 does not restrict the scope of practice of CRNAs. The Board disagrees with the statement that the application of

ASA Standards for Preanesthesia and Postanesthesia Care in §192.2 limits the preanesthesia and postanesthesia care of a patient to anesthesiologists only. Further, CRNAs are already required to adhere to ASA practice guidelines in other practice settings. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300887

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: March 18, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 305-7016



## CHAPTER 195. PAIN MANAGEMENT CLINICS

### 22 TAC §195.2

The Texas Medical Board (Board) adopts an amendment to §195.2, concerning Certification of Pain Management Clinics, without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10079) and will not be republished.

The amendment provides that if an applicant for a pain management clinic certificate is under investigation by the Board, then a decision on the applicant's initial application will not be decided upon until the investigation is closed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by Chapter 168, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2013.

TRD-201300888  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board  
Effective date: March 18, 2013  
Proposal publication date: December 28, 2012  
For further information, please call: (512) 305-7016



## **TITLE 43. TRANSPORTATION**

### **PART 1. TEXAS DEPARTMENT OF TRANSPORTATION**

#### **CHAPTER 3. PUBLIC INFORMATION**

##### **SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS**

###### **43 TAC §3.12**

The Texas Department of Transportation (department) adopts amendments to §3.12, concerning access to official records. The amendments to §3.12 are adopted without changes to the proposed text as published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9489) and will not be republished.

###### **EXPLANATION OF ADOPTED AMENDMENTS**

Section 3.12(e) lists the employees of the department who are authorized to certify official records of the department. Paragraph (1) of that subsection specifically applies to the certification of the minute orders of the Texas Transportation Commission (commission). In the recent reorganization of the department, titles and duties of employees were changed throughout the department.

Amendments to §3.12(e)(1) update the paragraph to accurately reflect the titles of the employees who are currently authorized to certify the commission's minute orders. Since 1996 the rules have authorized the department's chief minute clerk or, in the clerk's absence, the executive assistant to the deputy executive director may certify the commission's minute orders. After departmental reorganization, duties formerly performed by the chief minute clerk are now performed by the assistant chief clerk and duties performed for the commission by the executive assistant to the deputy executive director are now performed by the chief clerk to the commission. The amendments clarify that the commission's minute orders may be certified by either the chief clerk to the commission or assistant chief clerk.

###### **COMMENTS**

No comments on the proposed amendments were received.

###### **STATUTORY AUTHORITY**

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

###### **CROSS REFERENCE TO STATUTE**

Transportation Code, §201.501.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300925  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Effective date: March 21, 2013  
Proposal publication date: November 30, 2012  
For further information, please call: (512) 463-8683



#### **CHAPTER 5. FINANCE**

##### **SUBCHAPTER D. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES**

###### **43 TAC §5.42, §5.44**

The Texas Department of Transportation (department) adopts amendments to §5.42 and §5.44, concerning payment of fees for department goods and services. The amendments to §5.42 and §5.44 are adopted without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10175) and will not be republished.

###### **EXPLANATION OF ADOPTED AMENDMENTS**

The adopted changes result from the repeal of 43 TAC §23.27 regarding the sale of goods through *Texas Highways* Magazine and the addition of 43 TAC Chapter 23, Subchapter D, which provides a new promotional product program. That repeal and addition are adopted simultaneously with the changes made by this adoption.

Amendments to §5.42 delete travel promotional materials and department publications as examples of items included in the definition of "goods and services" for the purposes of Subchapter D of Chapter 5. Those examples are unnecessary and may be misleading because most, and perhaps all, of the department's promotional materials and department publications will be sold under the new promotional product program, which is excluded from Chapter 5, Subchapter D by §5.44(1). Even without those examples, the definition of "goods and services" is broad enough to cover any materials or publications that are sold in a manner other than under the promotional product program.

Amendments to §5.44 change the internal reference in the exception for products sold through *Texas Highways* magazine under §23.27 to products sold through the promotional product program under new Subchapter D of Chapter 23 of the rules because §23.27 is adopted for repeal and after its repeal, any sales made through the magazine will be made under the new promotional product program.

###### **COMMENTS**

No comments on the proposed amendments were received.

###### **STATUTORY AUTHORITY**

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.208, which provides the commission

with the authority to establish rules regarding the method of payment of a fee for any goods sold or services provided by the department or for the administration of any department program.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.208.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300926

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: March 21, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-8683



## CHAPTER 23. TRAVEL INFORMATION

The Texas Department of Transportation (department) adopts the repeal of §23.27, concerning Magazine Ancillary Products; and adopts new Subchapter D, §§23.51 - 23.59, concerning Promotional Product Program; and Subchapter E, §§23.101 - 23.105, concerning Merchandising Program. The repeal of §23.27 and new §§23.51 - 23.59 and §§23.101 - 23.105 are adopted without changes to the proposed text as published in the December 28, 2012, issue of the *Texas Register* (37 TexReg 10176) and will not be republished.

#### EXPLANATION OF ADOPTED REPEAL AND NEW SECTIONS

This adoption repeals §23.27 regarding the sale of goods through *Texas Highways* Magazine and adds new sections to establish the policies and procedures for the department's sale of all ancillary and promotional products. As part of the federal transportation reauthorization bill, MAP-21, the department is now authorized to offer goods for sale at rest areas and travel information centers. In response to this federal change, the department is changing its rules regarding the sale of promotional items to take advantage of this new authority. In addition, other changes are made to the rules to update the types of products offered for sale and to provide a new program to sell items that contain department-owned trademarks and service marks of intellectual property.

New §23.51, Purpose, states the purpose of Subchapter D.

New §23.52, Definitions, provides the definitions of terms used in Subchapter D.

New §23.53, Sale of Products by the Department, authorizes the department to sell products at various locations and provides basic program requirements. Currently the department sells items only through the *Texas Highways* Magazine. This new section allows the sale of goods at department buildings, including rest areas and travel information centers, to allow the department to take advantage of the changes in the federal law. This section also provides information regarding sales transactions, including shipping and handling fees, sales taxes, payment methods, and the disposition of collected revenue.

New §23.54, Types of Promotional Products, establishes the policies and procedures for the department's sale of products

under the promotional product program. The section describes the types and categories of products, which are expanded from those currently authorized to align with the new federal authorization.

New §23.55, Request for Inclusion of Product in Program, establishes the process for the selection and approval of products to be sold under the program. A wholesaler may submit to the department a request for a product to be considered for the program. The Travel Information Division director or the director's designee will make the final product selection. The section sets out the information that the wholesaler must submit with the request.

New §23.56, Market Research and Product Selection, provides the process used for department initiated product selection. This process provides an alternative for the department to seek products that have not been submitted for consideration. Under the process the department may use market research to select products and suppliers for the program.

New §23.57, Contract with a Vendor, authorizes the department to contract with a vendor to provide services for the program. The department is required to make the decision on final product selection and that duty may not be passed to a vendor. The section places specific requirements on the vendor regarding contracts with the wholesaler and the types of reports required to be furnished to the department.

New §23.58, Wholesaler Contract, requires that a wholesaler enter into a contract with the department or the department's vendor before the wholesaler's product may be sold under the program. This requirement is similar to the requirement under current §23.27(e), with minor changes to address formatting issues. The department continues to have the authority to set and change the price and to discontinue the acquisition or sale of the product.

New §23.59, Refunds and Complaints, establishes the process for handling refunds for returned products and complaints received by the department or a contracted vendor. To receive a refund the item must be returned unused and undamaged and accompanied by the tags and packaging that were with the item as delivered.

New §23.101, Purpose, establishes the purpose for new Subchapter E. The subchapter authorizes the department to sell promotional products bearing the department's trademark or service marks or that use copyrighted material of the department.

New §23.102, Definitions, provides the definitions for terms used in Subchapter E.

New §23.103, Merchandising Program, provides authority for the department to establish a new merchandising program under which the department may solicit proposals from one or more vendors to administer the program and secure retailers to sell products bearing the department's marks at no cost to the department. The department is given the authority to use an outside source for the parts of the program for which the department has limited expertise, but the department will maintain control over the program.

New §23.104, Product and Retailer Selection, establishes the requirements and selection process of products and retailers for the merchandising program. It places specific requirements for the selection of retailers and the information required of products to be sold under this program. The vendor must submit product, sale, and retailer information to the department. This information

will be used to determine approvals of products to be sold under the program and retail locations.

New §23.105, Vendor and Retailer Agreement, provides the terms and requirements for retailer and vendor agreements. The department requires that each agreement extend for at least two years and state the fees charged by the vendor to administer the program so that all parties are clear on the costs of participating in the program. The section also provides specific requirements for reports required to be submitted by the vendor to the department to ensure that the department can monitor and oversee the progress of the program.

#### COMMENTS

No comments concerning the proposed repeal and new sections were received.

### SUBCHAPTER C. TEXAS HIGHWAYS MAGAZINE

#### 43 TAC §23.27

##### STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300927

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: March 21, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-8683



### SUBCHAPTER D. PROMOTIONAL PRODUCT PROGRAM

#### 43 TAC §§23.51 - 23.59

##### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission

with the authority to establish rules for the conduct of the work of the department.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300928

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: March 21, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-8683



### SUBCHAPTER E. MERCHANDISING PROGRAM

#### 43 TAC §§23.101 - 23.105

##### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

##### CROSS REFERENCE TO STATUTE

Transportation Code, §204.009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2013.

TRD-201300929

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: March 21, 2013

Proposal publication date: December 28, 2012

For further information, please call: (512) 463-8683



# REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 101, Assessment, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 101 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, Development and Administration of Tests; and Subchapter C, Local Option.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 101, Subchapters A-C, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337.

TRD-201301007

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: March 6, 2013



Texas Department of Public Safety

### Title 37, Part 1

Pursuant to Government Code §2001.039, the Texas Department of Public Safety (the department) files this notice of intent to review and consider for re-adoption, amendment, or repeal 37 TAC Chapter 1, concerning Organization and Administration; Chapter 2, concerning Capitol Access Pass; Chapter 14, concerning School Bus Safety Standards; Chapter 17, concerning Administrative License Revocation; Chapter 18, concerning Driver Education; Chapter 23, concerning Vehicle Inspection; Chapter 27, concerning Crime Records; Chapter 35, concerning Private Security; Chapter 36, concerning Metals Registration; and Chapter 37, concerning Sex Offender Registration.

The department will determine whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*.

Comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to: Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

TRD-201300954

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: March 4, 2013



## Adopted Rule Reviews

Department of Information Resources

### Title 1, Part 10

The Texas Department of Information Resources (department) adopts the review of 1 Texas Administrative Code (TAC) Chapter 207, concerning Telecommunications Services Division, pursuant to §2001.039, Texas Government Code, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 207 continue to exist.

Notice of the rule review was published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1366). No comments were received as a result of that notice.

As a result of the rule review, the Board approved the publication of the proposed repeal and new chapter in August 2012, and the department published the proposed repeal and new 1 TAC Chapter 207 in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8103). The Board adopted the proposed repeal and new chapter on February 7, 2013, and the adoption notice was published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1355).

The department's review of 1 TAC Chapter 207 is concluded.

TRD-201300916

Martin H. Zelinsky  
General Counsel  
Department of Information Resources  
Filed: February 27, 2013

◆ ◆ ◆

Texas Department of Public Safety

**Title 37, Part 1**

The Texas Department of Public Safety (the department) files this notice of re-adoption without amendments of 37 TAC Chapter 4, concerning Commercial Vehicle Regulations and Enforcement Procedures; Chapter 6, concerning License to Carry Handguns; Chapter 31, concerning Standards for an Approved Motorcycle Operator Training Course; Chapter 33, concerning All-Terrain Vehicle Operator Education and Certification Program; and Chapter 34, concerning Negotiation and Mediation of Certain Contract Disputes. The re-adoption of Chapters 4, 6, 31, 33, and 34 are filed in accordance with the department's Notice of Intent to Review published in the November

23, 2012, issue of the *Texas Register* (37 TexReg 9371). No comments were received in response to the proposed rule review.

Texas Government Code §2001.039 requires agencies to review and consider for re-adoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The department reviewed Chapters 4, 6, 31, 33, and 34 and determined that the original justification for the rules continues to exist.

This concludes the department's review of 37 TAC Chapters 4, 6, 31, 33, and 34.

TRD-201300946  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Filed: March 4, 2013

◆ ◆ ◆



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 30 TAC Chapter 113--Preamble

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
A (§113.100)	General Provisions	June 25, 1997
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 25, 1997
H (§113.130)	Organic Hazardous Air Pollutants for Equipment Leaks	June 25, 1997
M (§113.180)	Perchloroethylene Dry Cleaning Facilities	October 15, 1997
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	October 15, 1997
R (§113.230)	Gasoline Distribution Facilities	June 25, 1997
S (§113.240)	Pulp and Paper Industry	July 14, 1999
U (§113.260)	Group I Polymers and Resins	October 7, 1998
X (§113.290)	Secondary Lead Smelting	June 25, 1997
Y (§113.300)	Marine Tank Vessel Loading Operations	June 25, 1997
CC (§113.340)	Petroleum Refineries	October 15, 1997
HH (§113.390)	Oil and Natural Gas Production Facilities	June 14, 2000
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating)	October 7, 1998
JJ (§113.410)	Wood Furniture Manufacturing Operations	July 14, 1999
KK (§113.420)	Printing and Publishing	October 7, 1998
YY (§113.560)	Generic Maximum Achievable Control Technology Standards	June 14, 2000
CCC (§113.600)	Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants	June 14, 2000
DDD (§113.610)	Mineral Wool Production	June 14, 2000
EEE (§113.620)	Hazardous Waste Combustors	July 14, 1999
GGG (§113.640)	Pharmaceuticals Production	July 14, 1999
HHH (§113.650)	Natural Gas Transmission and Storage Facilities	June 14, 2000
JJJ (§113.670)	Group IV Polymers and Resins	October 7, 1998
LLL (§113.690)	Portland Cement Manufacturing Industry	June 14, 2000
TTT (§113.770)	Primary Lead Processing	June 14, 2000
VVV (§113.790)	Publicly Owned Treatment Works	June 14, 2000
EEEE (§113.880)	Organic Liquids Distribution (Non-Gasoline)	May 25, 2005
FFFF (§113.890)	Miscellaneous Organic Chemical Manufacturing	May 25, 2005
UUUU (§113.1040)	Cellulose Products Manufacturing	June 18, 2003
ZZZZ (§113.1090)	Reciprocating Internal Combustion Engines	May 25, 2005
BBBBB (§113.1110)	Semiconductor Manufacturing	May 25, 2005
EEEEE (§113.1140)	Iron and Steel Foundries	May 25, 2005
GGGGG (§113.1160)	Site Remediation	May 25, 2005
HHHHH (§113.1170)	Miscellaneous Coating Manufacturing	May 25, 2005
DDDDDD (§113.1390)	Polyvinyl Chloride and Copolymers Production Area Sources	December 5, 2007
EEEEEE (§113.1400)	Primary Copper Smelting Area Sources	December 5, 2007
FFFFFF (§113.1410)	Secondary Copper Smelting Area Sources	December 5, 2007

Figure 2: 30 TAC Chapter 113--Preamble

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
DDDDD (§113.1130)	Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources
UUUUU (§113.1300)	Coal- and Oil-fired Electric Utility Steam Generating Units
WWWWW (§113.1320)	Hospital Ethylene Oxide Sterilizers Area Sources
YYYYY (§113.1340)	Electric Arc Furnace Steelmaking Facilities Area Sources
ZZZZZ (§113.1350)	Iron and Steel Foundries Area Sources
BBBBBB (§113.1370)	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources
CCCCC (§113.1380)	Gasoline Dispensing Facilities Area Sources
HHHHHH (§113.1425)	Paint Stripping and Miscellaneous Surface Coating at Area Sources
JJJJJ (§113.1435)	Industrial, Commercial, and Institutional Boilers Area Sources
LLLLL (§113.1445)	Acrylic and Modacrylic Fibers Area Sources
MMMMM (§113.1450)	Carbon Black Production Area Sources
NNNNN (§113.1455)	Chemical Manufacturing Area Sources: Chromium Compounds
OOOOO (§113.1460)	Flexible Polyurethane Foam Production and Fabrication Area Sources
PPPPP (§113.1465)	Lead Acid Battery Manufacturing Area Sources
QQQQQ (§113.1470)	Wood Preserving Area Sources
RRRRR (§113.1475)	Clay Ceramics Manufacturing Area Sources
SSSSS (§113.1480)	Glass Manufacturing Area Sources
TTTTT (§113.1485)	Secondary Nonferrous Metals Processing Area Sources
VVVVV (§113.1495)	Chemical Manufacturing Area Sources
WWWWW (§113.1500)	Plating and Polishing Area Sources
XXXXX (§113.1505)	Metal Fabrication and Finishing Area Sources
YYYYY (§113.1510)	Ferroalloys Production Facilities Area Sources
ZZZZZ (§113.1515)	Aluminum, Copper, and other Nonferrous Foundries Area Sources
AAAAA (§113.1520)	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources
BBBBB (§113.1525)	Chemical Preparations Industry Area Sources
CCCCC (§113.1530)	Paints and Allied Products Manufacturing Area Sources
DDDDD (§113.1535)	Prepared Feeds Manufacturing Area Sources
HHHHH (§113.1555)	Polyvinyl Chloride and Copolymers Production Major Sources

Figure 3: 30 TAC Chapter 113--Preamble

Date of Change to 40 CFR §63.14	FR Citation
July 16, 2007	72 FR 38864
October 29, 2007	72 FR 61060
November 16, 2007	72 FR 64860
December 26, 2007	72 FR 73180
December 28, 2007	72 FR 74088
January 2, 2008	73 FR 226
January 9, 2008	73 FR 1738
January 10, 2008	73 FR 1915
January 18, 2008	73 FR 3568
February 7, 2008	73 FR 7210
March 7, 2008	73 FR 12275
July 23, 2008	73 FR 42978
June 25, 2009	74 FR 30366
October 28, 2009	74 FR 55670
November 23, 2009	74 FR 61037
June 18, 2010	75 FR 34647
September 9, 2010	75 FR 54970
January 24, 2011	76 FR 4156
February 17, 2011	76 FR 9450
March 21, 2011	76 FR 15554
March 21, 2011	76 FR 15608
May 18, 2011	76 FR 28662
May 26, 2011	76 FR 30545
January 5, 2012	77 FR 556
February 16, 2012	77 FR 9304
April 17, 2012	77 FR 22848
August 16, 2012	77 FR 49490
September 11, 2012	77 FR 55698

# IN

## ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

### Texas Department of Agriculture

#### Request for Proposals: 2013 Specialty Crop Block Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Specialty Crop Block Grant Program (Program). The Program is designed to solely enhance the competitiveness of specialty crops. Projects must demonstrate a positive measurable impact on the specialty crop industry.

**Eligibility.** Responses will **only** be accepted from producer, industry, or community-based organizations involved with, or that promote, specialty crops.

Projects must demonstrate that they enhance the competitiveness of Texas' specialty crop industry.

Project funds may only be used for activities benefiting specialty crops.

Projects must benefit more than one individual, institution, or organization. Grant funds will not be awarded for projects that directly benefit or provide a profit to a single organization, institution, or individual.

Applications will not be accepted where the primary applicant is an educational institution.

Producer, industry, or community-based organizations involved with specialty crops may partner with an educational institution; however, the primary applicant must be a producer, industry, or community-based organizations involved with specialty crops.

#### Funding Parameters, Award Information, and Notification.

Selected projects will receive funding on a **cost reimbursement basis**. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Projects may be funded at varying levels depending on the nature of the project.

Projects must demonstrate strong justification for the requested budget, as well as the potential for providing significant demonstrable benefits to Texas specialty crops.

Where more than one (1) proposal on an eligible research topic is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to execute a grant on the basis of a response submitted to this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP.

The public announcements and written notifications will be made to all applicants and their affiliated agencies, organizations, or institutions. Favorable decisions will indicate the amount of award, duration of the grant, and any special conditions associated with the project.

**Submitting an Application.** Applications are currently being accepted and must be submitted on the form provided by TDA by the

submission deadline. Application form and guidance documents are available on TDA's website at: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

Applications must be complete and have all required documentation to be considered. Applications without required documentation will be returned. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by the applicant and include all required supporting documentation.

Applications may be submitted by mail or hand-delivered to TDA headquarters in Austin, Texas. If mailing the application, make sure it is properly marked.

**Deadline for Submission of Responses.** A complete application with signature must be submitted to TDA by the deadline. Mailed applications must be **POSTMARKED** by Friday, March 22, 2013. Hand-delivered, faxed or scanned applications must be **RECEIVED** by TDA by close of business on Friday, March 22, 2013. Late proposals will not be accepted.

In addition, the narrative must be submitted via email to: [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov) in a format which allows the text copy function to be operational, such as Microsoft Word (.doc, .docx) or Adobe Acrobat (.pdf).

**Contact Information.** Complete proposal narrative and application with signature must be submitted to:

Physical Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Mailing Address: Ms. Mindy Fryer, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Electronic Versions: Fax: (888) 223-9048, Email: [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov)

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Weth Fryer, Grants Specialist, at (512) 463-6908 or by email at: [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

**Texas Public Information Act.** Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201300958

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: March 4, 2013

### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/11/13 - 03/17/13 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/11/13 - 03/17/13 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 03/01/13 - 03/31/13 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 03/01/13 - 03/31/13 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

TRD-201300997

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 5, 2013

## Employees Retirement System of Texas

### Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas in relation to a contract award for Third-Party Administrative Services for Short-Term and Long-Term Disability Income Benefits for Participants under the Texas Employees Group Benefits Program. The contractor is:

Aon Hewitt Absence Management LLC, 100 Half Day Road, Lincolnshire, Illinois 60069

The cost of the contract is estimated to be approximately \$26.5 million. The contract was executed on February 26, 2013. The term of the contract to begin September 1, 2013, and will be for a four-year term, subject to the terms of the contract.

TRD-201301009

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: March 6, 2013

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 15, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the re-

quirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 15, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bill Cate; DOCKET NUMBER: 2012-2483-AGR-E; IDENTIFIER: RN106331259; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: animal feeding operation; RULE VIOLATED: 30 TAC §321.47(b)(3)(A), by failing to properly manage animal waste to prevent the possibility of runoff to waters in the state; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Bishop; DOCKET NUMBER: 2012-0082-MWD-E; IDENTIFIER: RN101920684; LOCATION: Bishop, Nueces County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010427001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.1, and TPDES Permit Number WQ0010427001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0010427001, Monitoring and Reporting Requirements Number 1, by failing to monitor effluent at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010427001, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 30, 2011; PENALTY: \$35,880; Supplemental Environmental Project offset amount of \$35,880 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: City of Chico; DOCKET NUMBER: 2012-1746-MWD-E; IDENTIFIER: RN102833845; LOCATION: Chico, Wise County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010023001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$33,300; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Denton; DOCKET NUMBER: 2012-2444-PST-E; IDENTIFIER: RN100649110; LOCATION: Denton, Denton County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide cor-

rosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Woodville; DOCKET NUMBER: 2012-2624-MSW-E; IDENTIFIER: RN106552227; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2012-2344-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Number 20204, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O-02055, and Special Terms and Conditions (STC) Number 11, by failing to prevent unauthorized emissions during an emissions event that occurred on June 9, 2012, in the G Unit of the Number 3 Makeup/Number 6 Recycle Compressor, Emission Point Number (EPN) PL-GRV3, and lasted three minutes (Incident Number 169473); and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 20204, SC Number 1, FOP Number O-02055, and STC Number 11, by failing to prevent unauthorized emissions during an emissions event that occurred on August 8, 2012, at the Number 4 Hyper Compressor located in the G Unit, EPN PLUMG, and lasted one minute (Incident Number 172088); PENALTY: \$13,126; Supplemental Environmental Project offset amount of \$5,250 applied to Texas Parent Teacher Association (PTA) - Texas PTA Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2012-0402-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1317, Special Terms and Conditions (STC) Number 2F, by failing to submit the initial notification for Incident Number 162013 within 24 hours after discovery; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), FOP Number O1317, STC Number 22 and Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$14,688; Supplemental Environmental Project offset amount of \$5,875 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: GANDAF USA, INCORPORATED dba Super Food Mart 1; DOCKET NUMBER: 2012-2100-PST-E; IDENTIFIER: RN101893253; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Houston Refining LP; DOCKET NUMBER: 2012-2037-IWD-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: integrated petroleum refinery with an associated wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000392000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall Numbers 001 and 003, by failing to comply with permitted effluent limitations at Outfall Numbers 001 and 003; PENALTY: \$22,500; Supplemental Environmental Project offset amount of \$9,000 applied to City of Pasadena - Capture Gate on Preston; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Lake Dallas Independent School District; DOCKET NUMBER: 2012-2635-PST-E; IDENTIFIER: RN101539872; LOCATION: Lake Dallas, Denton County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$3,375; Supplemental Environmental Project offset amount of \$2,700 applied to City of Baytown - Hospital Remediation Project at Goose Creek; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Lighthouse Environmental Services, Incorporated; DOCKET NUMBER: 2012-1933-IHW-E; IDENTIFIER: RN106341787; LOCATION: Houston, Harris County; TYPE OF FACILITY: hazardous, Class 1, Class 2, and Class 3 waste transporting; RULE VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of Class 1 waste at an unauthorized facility; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Mansoor Trading Corporation dba Express Food Mart; DOCKET NUMBER: 2012-2407-PST-E; IDENTIFIER: RN102346095; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Medistar Victory SA Hospital, LP, formerly FAE Holdings 411560R, and Victory Landmark Real Estate, LLC; DOCKET NUMBER: 2012-1749-EAQ-E; IDENTIFIER: RN106376296; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.23(a), by failing to obtain approval of an Edwards Aquifer pollution protection plan prior to initiating construction over the Edwards Aquifer Recharge and Contributing Zones; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Omar Vela dba O Marias; DOCKET NUMBER: 2012-2447-PST-E; IDENTIFIER: RN102054376; LOCATION: Roma, Starr County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(A), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change;

30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Pine Tree Independent School District; DOCKET NUMBER: 2012-1764-PST-E; IDENTIFIER: RN101759132; LOCATION: Longview, Gregg County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the UST; PENALTY: \$18,500; Supplemental Environmental Project offset amount of \$14,800 applied to Timber Buffer Erosion Control Project; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: RRL Ventures, Incorporated dba SP Food Mart; DOCKET NUMBER: 2012-2411-PST-E; IDENTIFIER: RN101444651; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: S & K ENTERPRISE, INCORPORATED dba Lake Conroe Food Mart; DOCKET NUMBER: 2012-2520-PWS-E; IDENTIFIER: RN102424553; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample; 30 TAC §290.109(c)(4)(B), by failing to collect one raw groundwater source *escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample; and 30 TAC §290.122(c)(2)(B), by failing to provide public notification of the failure to collect routine coliform samples; PENALTY: \$696; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Sealy Independent School District; DOCKET NUMBER: 2012-2537-PST-E; IDENTIFIER: RN101828663; LOCATION: Sealy, Austin County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: SHAZADA ENTERPRISES, INCORPORATED dba Short Trip Food Mart; DOCKET NUMBER: 2012-2234-PST-E; IDENTIFIER: RN100860626; LOCATION: Houston, Harris County;

TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$10,873; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: STATE LINE BUSINESS, INCORPORATED dba State Line Food Mart; DOCKET NUMBER: 2012-2212-PST-E; IDENTIFIER: RN102712668; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2012-2314-PST-E; IDENTIFIER: RN100652486; LOCATION: Marlin, Falls County; TYPE OF FACILITY: hospital with two underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$3,375; Supplemental Environmental Project offset amount of \$2,700 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2012-0371-PST-E; IDENTIFIER: RN101696375; LOCATION: Taylor, Williamson County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: \$5,000; Supplemental Environmental Project offset amount of \$4,000 applied to Railroad Commission of Texas - Alternative Fuels Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(23) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2012-0883-PST-E; IDENTIFIER: RN102251147; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: non-retail fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: \$1,875; Supplemental Environmental Project offset amount of \$1,500 applied to Railroad Commission of Texas - Alternative Fuels Clean School Bus Replacement Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.



(24) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2012-1672-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2213, Special Terms and Conditions (STC) Number 21, and Flexible Permit Numbers 20432 and PSD-TX-994M1, Special Conditions (SC) Number III-1, by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2217, STC Number 16, and New Source Review (NSR) Permit Number 22072, SC Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4) and THSC, §382.085(b), by failing to report all contaminants released in the final report; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2215, STC Number 11, and NSR Permit Number 834, SC Number 1, by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2215, STC Number 11, and NSR Permit Number 8567, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$41,502; Supplemental Environmental Project offset amount of \$16,601 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Trophy Club Municipal Utility District Number 1; DOCKET NUMBER: 2012-1367-MWD-E; IDENTIFIER: RN101520286; LOCATION: Trophy Club, Denton County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011593001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, by failing to comply with the permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0011593001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for the required parameter at the minimum frequency specified in the permit; PENALTY: \$50,500; Supplemental Environmental Project offset amount of \$40,400 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: U & K LLC dba R M Foods; DOCKET NUMBER: 2012-2298-PST-E; IDENTIFIER: RN101557924; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3)(B), by failing to report a suspected release to the TCEQ within 24 hours; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: \$3,663; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Walker County Hospital Corporation dba Huntsville Memorial Hospital; DOCKET NUMBER: 2012-2197-PST-E; IDENTIFIER: RN100570944; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: hospital with a backup generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.8(b)(2)

and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST; PENALTY: \$7,126; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: WESTERN 66 COMPANY dba The Card-stop; DOCKET NUMBER: 2012-2132-PST-E; IDENTIFIER: RN101772895; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: unmanned card-operated facility with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(29) COMPANY: Zenergy, Incorporated; DOCKET NUMBER: 2011-0660-AIR-E; IDENTIFIER: RN106076391; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: oil and gas well site; RULE VIOLATED: 30 TAC §115.112(d)(5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to route flashed gases from the site to a vapor recovery system or a control device; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: \$265,562; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201300969

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2013



## Notice of District Petition

Notices issued February 15, 2013.

TCEQ Internal Control No. D-12032012-005; Magnolia 1138, Ltd. ("Petitioner") filed a petition for creation of Montgomery County Water Control & Improvement District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,141.165 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Magnolia, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. R-2012-016, effective July 10, 2012, the City of Magnolia, Texas, gave its consent to the creation of the proposed District, and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the pro-

posed District; (2) collect, transport, process, dispose of and control all domestic, industrial or commercial wastes whether in fluid, solid or composite state; (3) gather, conduct, divert and control local storm water or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the Petitioner; (4) purchase interests in land; (5) purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreational facilities; and (6) acquire, finance, operate and maintain such additional facilities, systems, plants, and enterprises as shall be consistent with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$20,944,000 (\$14,759,000 waste and drainage plus \$6,185,000 recreation).

TCEQ Internal Control No. D-12032012-003; PETITION. Magnolia 1138, Ltd. ("Petitioner") filed a petition for creation of Montgomery County Municipal Utility District No. 130 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 382.969 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Magnolia, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. R-2012-014, effective July 10, 2012, the City of Magnolia, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend; maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) purchase interests in land; (5) purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreational facilities; and (6) acquire, finance, operate and maintain such additional facilities, systems, plants, and enterprises as shall be consistent with the purpose for which the District is created. Within the proposed District, it may also exercise road powers and authority, as well as establish, finance, provide, operate and maintain a fire department and/or fire-fighting services pursuant to applicable laws. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$38,030,500 (\$29,737,000 for utilities plus \$2,769,500 for recreational facilities plus \$5,524,000 for roads).

TCEQ Internal Control No. D-12032012-004; Magnolia 1138, Ltd. ("Petitioner") filed a petition for creation of Montgomery County Municipal Utility District No. 131 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30

Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 758.196 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Magnolia, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. R-2012-015, effective July 10, 2012, the City of Magnolia, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) purchase interests in land; (5) purchase, construct, acquire, improve, extend, maintain and operate improvements, facilities and equipment for the purpose of providing recreational facilities; and (6) acquire, finance, operate and maintain such additional facilities, systems, plants and enterprises as shall be consistent with the purpose for which the District is created. Within the proposed District, it may also exercise road powers and authority, as well as establish, finance, provide, operate and maintain a fire department and/or fire-fighting services pursuant to applicable laws. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$46,540,750 (\$34,295,000 for utilities plus \$3,414,750 for recreational facilities plus \$8,831,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should

be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-201301005

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 6, 2013



## Notice of Minor Amendment Radioactive Material License Number R04100

APPLICATION. Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for an administrative amendment to Radioactive Material License R04100 on January 22, 2013. Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas, and is the licensed operator of the Compact Waste Disposal Facility (CWF) and Federal Facility Waste Facility (FWF) for commercial and federal low-level radioactive waste disposal. The land disposal facility for low-level radioactive waste disposal is located at 9998 State Highway 176 West in Andrews County, Texas.

After further review, the Executive Director has determined that this request is a minor amendment. The amendment to the license is as follows. License Conditions (LC) 7.A and 7.B were revised to allow for the total activity to be decay corrected. License Condition 9 was revised to clarify that the licensee may not dispose of mixed low-level radioactive waste defined in 30 TAC §336.2(80) unless authorized by a TCEQ hazardous waste permit in accordance with 30 TAC Chapter 335. An exception to the prohibition of hazardous waste that is authorized for disposal within the Federal Facility Waste Disposal Facility was also added. LC 17 was modified to clarify that notification to the TCEQ of any civil, administrative, or criminal citations is required only if such legal action was brought against the employee acting in their scope of employment for WCS and not for the employee's own personal matters. LCs 52, 57, 59, 63, and 64 have been completed and were replaced by a reserved notation. The Preconstruction Requirements section was moved to now begin at LC 53. LC 53.A was modified to require the licensee to submit plans for additional borings prior to any major construction at the Compact Waste Disposal Facility or the Federal Facility Waste Disposal Facility. LC 53 subparts B through K were removed because their requirements have been satisfied, with the exception of subpart H, which has replaced LC 53.B and is still required for future major construction. LC 54 was modified to reflect the commencement of any major construction. Subparts 54.B, C, E, F, H, I and J were removed. Subpart 54.C was combined with LC 151 due to redundancy found within the requirements. LC 55 was modified to reflect the commencement of any future major construction. Subparts A and B were combined into one subpart A and subparts C and D were removed as the requirements have been satisfied. LC 56.C was moved to LC 169 due to redundancy found within requirements and subparts A and B were removed. LC 60 and 61 were modified to reflect requirements that are necessary for the commencement of any future major construction. LC 62.A-M was moved to LC 119.E because the respiratory protection program has already been submitted to the executive director and must now be maintained. LC 65 was mod-

ified to reflect requirements that are necessary for the commencement of any future major construction. LC 96 was modified to reflect the requirement stated in LC 145 that a monthly site receipt and disposal activities report must be submitted no later than the seventh (7th) day of month for the previous month's activities. LC 99 was modified to remove the requirement that sixty (60) days prior to accepting waste for disposal, an inventory of any waste being stored must be provided and was also modified to remove the prohibition for the licensee to use any area outside of the land disposal facility for staging or managing waste intended for disposal. The licensee is now required to provide an updated stored inventory report of any stored waste intended for disposal in the CWF and the FWF each quarter throughout the operational period per LC 99. LC 100 was modified to allow the Licensee to revise the procedures, programs and plans addressed in LC 100 upon executive director review and approval without amendment to the license. Any proposed change must be submitted within at least 30 days of its intended use, unless otherwise agreed to by the executive director. LC 111 was modified to remove the requirement for annual review and reporting of procedures to the executive director since procedural changes will now be reviewed and approved individually on a continuing basis. LC 112 was removed due to redundancy found within the requirements. LC 116 was modified to allow the Quality Assurance Manager, or his qualified delegate/designee, to review QA/QC records at least annually. LC 143 was modified to allow for utility generators as a source of the sealed source waste stream listed in Table 2 of the license. LC 145 was removed due to redundancy found within the requirements. LC 151 was modified to clarify that the testing of the geotechnical properties of the cover system materials is to occur during the construction of the cover system and not after it is completed and functioning. LC 54.C was added to further clarify the cover system requirements. LC 155 was modified to allow for transportation of waste across the buffer zone, and environmental/radiation monitoring and routine maintenance in the buffer zone. LC 169 now includes LC 56.C to reduce redundancies within the license. LC 178 was modified to require annual fauna samples only when available. LC 186 was modified to remove the requirement to follow procedures tied to the license. Attachment C, Section 2.2 was modified by removing waste received by rail from the list of waste types currently prohibited from disposal in the Compact Waste Facility to correct an error since this should have been removed in a prior amendment authorizing WCS to receive radioactive waste by rail. The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the application or notice:

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type=>

For an exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the amendment application and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas, and at the Andrews Public Library in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of

public interest in the applications or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

**EXECUTIVE DIRECTOR ACTION.** The application is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

**MAILING LIST.** If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license or permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register*; whichever is later.

**AGENCY CONTACTS AND INFORMATION.** If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Further information may also be obtained from WCS at the address stated above or by calling Mr. Scott Kirk at (432) 525-8500.

TRD-201301004

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 6, 2013



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 15, 2013**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 15, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Boundary Ventures, Inc.; DOCKET NUMBER: 2012-1554-MLM-E; TCEQ ID NUMBER: RN100916832; LOCATION: 6254 Highway 71, Altair, Colorado County; TYPE OF FACILITY: oil and gas waste recycling plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; THSC, §382.085(b) and 30 TAC §106.8(c)(2)(B) and §106.146(1), by failing to maintain records to demonstrate compliance with applicable permit by rule conditions; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$9,653; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BRUSH COUNTRY DEVELOPMENT CORPORATION; DOCKET NUMBER: 2012-1188-PWS-E; TCEQ ID NUMBER: RN106103765; LOCATION: 5087 Texas Highway 44, Freer, Duval County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), by failing to collect routine distribution water samples for coliform analysis for the months of April 2011 - August 2011; and THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), by failing to collect routine distribution water samples for coliform analysis for the months of September 2011 - February 2012; PENALTY: \$3,669; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: City of Sullivan City; DOCKET NUMBER: 2011-2190-MSW-E; TCEQ ID NUMBER: RN106233695; LOCATION: 500 Cenizo Street, Sullivan City, Hidalgo County; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$15,000; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Coastal King Operations, Inc. d/b/a Whistle Stop 2; DOCKET NUMBER: 2012-0489-PST-E; TCEQ ID NUMBER: RN102833662; LOCATION: 13433 Leopard Street, Corpus Christi, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$3,880; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200,

6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: Cotulla Fish Hatchery, LLC; DOCKET NUMBER: 2012-0630-MLM-E; TCEQ ID NUMBER: RN106201825 and RN106201809; LOCATION: Business Highway 35 on the east side of the Nueces River Bridge, Cotulla, La Salle County; TYPE OF FACILITY: public water system and on-site sewage facility; RULES VIOLATED: 30 TAC §285.3(b)(1) and Texas Health and Safety Code, §366.051(a), by failing to obtain authorization to construct On-Site Sewage Facility's (OSSFs) at the OSSF Sites; 30 TAC §290.39(e), by failing to submit planning material for the public water system facility; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data before placing a well into service as a public water system; PENALTY: \$1,785; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: Crochet Equipment Co., Inc.; DOCKET NUMBER: 2011-1746-MLM-E; TCEQ ID NUMBER: RN101945491; LOCATION: 2814 North Twin City Highway, Nederland, Jefferson County; TYPE OF FACILITY: unauthorized municipal solid waste disposal (MSW) site; RULES VIOLATED: 30 TAC §330.15(c) and §330.171(b), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$900; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Donald S. Fletcher d/b/a Equestrian Estates; DOCKET NUMBER: 2012-2089-PWS-E; TCEQ ID NUMBER: RN101239077; LOCATION: 133 Horseshoe Bend, Erath County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the second quarter of 2010 through the second quarter of 2011; TWC, §5.702 and 30 TAC §290.51(a)(3), by failing to pay all annual Public Health Service fees, for fiscal years 2002 - 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account Number 90720034; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and failing to provide public notice of the failure; Texas Health and Safety Code, §341.031(a) and 30 TAC §290.109(f)(3) and §290.122(c)(2)(A), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and failing to provide public notice of the MCL exceedance for the month of December 2011; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter for the third and fourth quarters of 2011; 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite monitoring to the executive director; and 30 TAC §290.107(e), by failing to report the results for triennial synthetic organic contaminants monitoring to the executive director; PENALTY: \$1,808; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: ELIM GAS STATION CORPORATION d/b/a Speed Max 4; DOCKET NUMBER: 2012-2278-PST-E; TCEQ ID NUMBER: RN101564391; LOCATION: 301 Legacy Drive, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Garcha Corporation; DOCKET NUMBER: 2011-1298-PST-E; TCEQ ID NUMBER: RN101556728; LOCATION: 220 East Farm-to-Market Road 1417, Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and truck stop; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system by failing to conduct the annual piping tightness test; PENALTY: \$15,634, the Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by respondent and determined that respondent is unable to pay all or part of the administrative penalty. Therefore, \$12,034 is deferred contingent upon respondent's timely and satisfactory compliance with all the terms of this AO; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: JSTH INVESTMENT, INC. d/b/a JR Food Mart 7; DOCKET NUMBER: 2012-1667-PST-E; TCEQ ID NUMBER: RN101780427; LOCATION: 1013 Hurst Street, Center, Shelby County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: \$4,505; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Robert E. Heard, Jr.; DOCKET NUMBER: 2011-1819-MLM-E; TCEQ ID NUMBER: RN104093190; LOCATION: 6910 Cadillac Street, Houston, Harris County; TYPE OF FACILITY: lead battery servicing business; RULES VIOLATED: TWC, §26.266, 30 TAC §330.15(c) and §335.4, by failing to prevent the unauthorized discharge of municipal, industrial solid, and hazardous waste; PENALTY: \$10,500; STAFF ATTORNEY: Jennifer

Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Sereno LLC d/b/a Oak Creek Mobile Home Park; DOCKET NUMBER: 2012-1561-MWD-E; TCEQ ID NUMBER: RN101241271; LOCATION: 6311 North Farm-to-Market Road 1417, Denison, Grayson County; TYPE OF FACILITY: mobile home park with a wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014788001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$10,125; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: S.N.N.V. ENTERPRISES INC. d/b/a Oak Grove Grocery; DOCKET NUMBER: 2012-1968-PST-E; TCEQ ID NUMBER: RN102783172; LOCATION: 4598 North Farm-to-Market Road 46, Franklin, Robertson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection or the UST system; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the suction piping associated with the USTs and by failing to conduct the triennial piping tightness test; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,959; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Sue Allen; DOCKET NUMBER: 2012-0111-MSW-E; TCEQ ID NUMBER: RN105835425; LOCATION: 5661 Agnes Street, Corpus Christi, Nueces County; TYPE OF FACILITY: unauthorized waste disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §328.63(b), by failing to obtain prior authorization for the storage of approximately 1,500 scrap tires and scrap tire pieces on the ground at the site; PENALTY: \$6,300; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (403) 403-4023; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: SUPREME BUSINESS, INC. d/b/a Fuel Expo 1; DOCKET NUMBER: 2012-1787-PST-E; TCEQ ID NUMBER: RN101733988; LOCATION: 3500 Fairmont Parkway, Pasadena, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$6,750; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201300970

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: March 5, 2013



## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 15, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 15, 2013**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Amtul Enterprises, Inc. d/b/a Cross Country; DOCKET NUMBER: 2012-1557-PST-E; TCEQ ID NUMBER: RN102035391; LOCATION: 16117 State Highway 64 East, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$7,630; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Rocky Wadlington d/b/a Farrar Water Supply Corporation; DOCKET NUMBER: 2012-1590-PWS-E; TCEQ ID NUMBER: RN101441095; LOCATION: intersection of Limestone County Road 846 and Limestone County Road 848, Farrar, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.107(e), by failing to provide the results of sexennial volatile organic chemical contaminant sampling to the executive director; 30

TAC §290.106(e) and §290.113(e), by failing to provide the results of triennial Stage 1 disinfectant byproducts, metal, and mineral sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director for the 2010 reporting period; 30 TAC §290.113(e), by failing to provide the results of annual Stage 1 disinfectant byproducts sampling to the executive director for the 2010 reporting period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay public health service fees for TCEQ Financial Administration Account Number 91470007 for fiscal years 2011 - 2012; 30 TAC §290.107(e), by failing to provide the results of triennial synthetic organic chemical contaminant sampling to the executive director; and 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director for the 2011 reporting period; PENALTY: \$1,015; STAFF ATTORNEY: Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: TEXAS SUPERTRACK, INC. d/b/a Supertrack Store; DOCKET NUMBER: 2012-1730-PST-E; TCEQ ID NUMBER: RN102849379; LOCATION: 2020 East Pioneer Parkway, Arlington, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the USTs; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detectors at least once per year for performance and operational reliability; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and Texas Health and Safety Code, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: \$18,658; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Thomas Pankratz DBA Shady Rest Mobile Home Park; DOCKET NUMBER: 2012-0415-PWS-E; TCEQ ID NUMBER: RN102686128; LOCATION: 15 Cascade Caverns Road, Boerne, Kendall County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A), (f)(3), and (10), §290.122(c)(1)(B) and (f), by failing to submit disinfectant level quarterly operating reports (DLQORs) to the executive director each quarter by the tenth day of the month following the end of the quarter for the second quarter of 2008 through the second quarter of 2011, and failing to provide public notice of the failure to submit the required DLQORs for the fourth quarter of 2008, the first and second quarters of 2009, and the third and fourth quarters of 2010; 30 TAC §290.106(e) and §290.113(e), by failing to report the results of triennial inorganic contaminants and disinfectant byproducts monitoring to the executive director; 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrite monitoring to the executive director; 30 TAC §290.107(e), by failing to report the results of the six-year monitoring period for volatile organic compound sampling to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit the DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2011; and TWC, §5.702 and 30 TAC §290.51(b), by failing to pay all annual public health service fees, including any associated late fees and penalties; PENALTY: \$3,489; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL

OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201300971

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2013



## Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 15, 2013**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 15, 2013**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Jasani's International, Inc. dba Silsbee Shell; DOCKET NUMBER: 2012-0594-PST-E; TCEQ ID NUMBER: RN102430303; LOCATION: 3211 Farm-to-Market Road 92, Silsbee, Hardin County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$3,050;



STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: SUNSHINE STORES, INC. d/b/a Sunshine Truck Stop; DOCKET NUMBER: 2012-0955-PST-E; TCEQ ID NUMBER: RN102358488; LOCATION: 4010 South Street, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A), (2)(A)(i), (d)(1)(B)(ii), and (iii)(I), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to test the line leak detectors at least once per year for performance and operational reliability, and by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of one percent of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; 30 TAC §334.54(b)(1) and (2), by failing to keep the UST system vent lines open and functioning, and by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.72, by failing to report a release to the TCEQ within 24 hours after discovery; and 30 TAC §§334.48(a) and 334.74 - 334.78, by failing to ensure that the UST system is operated, maintained, and managed in accordance with industry practices to prevent a release of a regulated substance and by failing to conduct release investigation and corrective actions; PENALTY: \$20,334; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201300972

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 5, 2013



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 106

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 106, Permits by Rule, §106.359, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would add a new permit by rule §106.359 to authorize emissions from planned maintenance, startup, and shutdown (MSS) activities at oil and gas handling and production facilities. The proposed PBR requires that the permit holder keep records, develop and implement a maintenance program, and use best management practices to minimize emissions from planned MSS activities.

The commission will hold a public hearing on this proposal in Austin, on April 4, 2013, at 2:00 p.m., in Building E, Room 201S, at the commission's central office, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2012-030-106-AI. The comment period closes April 15, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Tasha Burns, Air Permits Division, (512) 239-5868.

TRD-201300937

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2013



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 113

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would include updates to existing maximum achievable control technology (MACT) and generally available control technology (GACT) standards. The proposed rulemaking would amend numerous existing sections of Chapter 113 containing federal MACT standards to incorporate changes made by the United States Environmental Protection Agency (EPA), and would incorporate by reference 28 new MACT and GACT standards that have been recently promulgated by the EPA.

The commission will hold a public hearing on this proposal in Austin on Thursday, April 11, 2013, at 10:00 a.m., in Building B, Room 201A at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted



during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2013-004-113-AI. The comment period closes April 15, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Michael Wilhoit, Air Permits Division, Technical Program Support Section, (512) 239-1222.

TRD-201300938

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2013



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 290

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 290, Public Drinking Water, §§290.42, 290.44, and 290.109, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill (HB) 3372, §3 of HB 3391 and Senate Bill 1073, 82nd Legislature, 2011, for structures that are connected to a public water system (PWS) and have a rainwater harvesting system (RWHS). The proposed rulemaking would allow an RWHS that is connected to a PWS to be used for indoor potable purposes and establish minimum requirements for a PWS that allows the connection of an RWHS used for indoor potable purposes to its distribution system. The proposed rulemaking would also make other non-substantive changes to reflect existing agency practices, conform with grammar, sequencing and formatting requirements, and correct a typographical error.

The commission will hold a public hearing on this proposal in Austin on April 9, 2013, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restric-

tions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2011-057-290-OW. The comment period closes April 15, 2013. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Cindy Haynie, Plan & Technical Review Section, (512) 239-3465.

TRD-201300935

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 1, 2013



#### Notice of Water Quality Applications

The following notices were issued on February 22, 2013, through March 1, 2013.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

#### INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 58 has applied to the TCEQ for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011941001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 15403 Bammel Village Drive, approximately 1,100 feet west of Kuykendahl Road and 2,250 feet south of Farm-to-Market Road 1960 on the north and south sides of Bammel Village Drive in Harris County, Texas 77014.

NEW WAY LAND DEVELOPMENT, LLC has applied for a new permit, proposed TPDES Permit No. WQ0015058001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility will be located at the intersection of Interstate Highway 35 and Ranch Road 3408 in La Salle County, Texas 78014.

SH DJL DEVELOPMENT has applied for a major amendment to TCEQ Permit No. WQ0015038001 to authorize a change in the method of disposal from subsurface drip irrigation to discharge to a receiving surface water body, and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 45,000 gallons per day to a daily average flow not to exceed 240,000 gallons per day. The facility will be located 3,000 feet north of Highway 46 and 800 feet west of Highway 281 in Comal County, Texas 78070.

JEREMIAH VENTURE LP has applied for a new permit, Proposed Permit No. WQ0014785001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day via surface irrigation of 122.37 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at 6327 Farm-to-Market Road 967, Buda, in Hays County, Texas.

WHITE OAK UTILITIES INC has applied for a renewal of TPDES Permit No. 14133-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 21744 Farm-to-Market Road 1488, approximately 450 feet north of Farm-to-Market Road 1488 and ap-

proximately 1,100 feet east of the Montgomery/Waller County line in Montgomery County, Texas.

EASTLAND COUNTY WATER SUPPLY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0013726001 to remove the pond liner certification requirement from the permit. The current permit authorizes the discharge of treated filter backwash water from a potable water treatment plant at a daily average flow not to exceed 100,000 gallons per day. The facility is located 1.5 miles south of Interstate Highway 20 on Farm-to-Market Road 2461 in Eastland County, Texas.

PLANTATION MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011971001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 440,000 gallons per day. The applicant has requested that the 550,000 gallons per day final phase be deleted from the permit. The facility is located at 802 Tara Plantation Drive on the north bank of Rabbs Bayou, approximately 4,000 feet north of Booth-Richmond Road (Farm-to-Market Road 2759) and approximately 3,250 feet east of Crabb River Road in Fort Bend County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 15 has applied for a renewal of TPDES Permit No. WQ0011939001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,120,000 gallons per day. The facility is located at 17934 Drum Heller Lane, approximately one half mile west of the intersection of Gregson Road and North Eldridge Parkway in Harris County, Texas 77377.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 8 has applied for a renewal of TPDES Permit No. WQ0011727001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 835,000 gallons per day. The facility is located at 555 Normandy Street, just south of the intersection of Normandy Street and Woodforest Boulevard in Harris County, Texas 77015.

SOUTHERN MONTGOMERY COUNTY MUNICIPAL UTILITY District has applied for a renewal of TPDES Permit No. WQ0011001001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 852 Rayford Road, approximately 3,500 feet north of Spring Creek and approximately 4,000 feet east of Interstate Highway 45 in Montgomery County, Texas 77386.

CITY OF ANDREWS has applied for a renewal of TCEQ Permit No. WQ0010119001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,200,000 gallons per day via irrigation on 120 acres of public access golf course and 320 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.1 miles east-southeast of the intersection of U.S. Highway 385 and State Highway 115 (Broadway Avenue), 2000 feet south of the intersection of State Highway 115 and South East 1001. The evaporation/storage ponds are located to the south of the plant site. The 320 acres of agricultural irrigation land is located to the east of South East 1001 and the golf course is located in the northeast quadrant of the City of Andrews in Andrews County, Texas 79714.

CITY OF PASADENA has applied for a renewal of TPDES Permit No. WQ0010053009 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 14,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of their newly developed pretreatment program under the TPDES program. The facility is located at 209 North Main Street, on the north side

of Little Vince Bayou in the City of Pasadena approximately 1,500 feet north of State Highway 225 and 500 feet east of North Shaver Street in Harris County, Texas 77506. There is an 18 million gallon off-site influent detention pond located approximately 2,000 feet southwest from the confluence of Vince Bayou with Little Vince Bayou. The applicant has also applied to the TCEQ for approval of a new pretreatment program under the TPDES program.

CITY OF DALLAS which operates the Dallas Zoo, has applied for a new permit, draft TPDES Permit No. WQ0004984000, to authorize the discharge of treated first flush stormwater on an intermittent and flow variable basis via Outfall 001; the discharge of post-first flush stormwater on an intermittent and flow variable basis via Outfalls 002, 003, and 004; and the reuse of treated first flush stormwater for landscape irrigation. The facility is located at 650 South R.L. Thornton Freeway, immediately southwest of the intersection of South R.L. Thornton Freeway and South Marsalis Avenue in the City of Dallas, Dallas County, Texas 75203.

CER COLORADO BEND ENERGY PARTNERS LP which operates Colorado Bend Energy Center, a natural gas-fired combined-cycle power generation facility, has applied for a major amendment with renewal to TPDES Permit No. WQ0004781000 to authorize: removal of Internal Outfalls 101 and 201; use of an alternative methodology of free chlorine residual analysis at Outfall 001; a change in the sample type for free chlorine from composite to grab sampling at Outfall 001; removal of the interim phase at Outfall 001; removal of effluent limitations and monitoring requirements for temperature at Outfall 001; and approval of an alternate methodology for chlorinating recirculated cooling tower water discharge via Outfall 001. The existing permit authorizes the discharge of cooling tower blowdown commingled with contact stormwater and previously monitored effluent (metal cleaning waste monitored at Internal Outfall 101, low volume waste and contact stormwater monitored at Internal Outfall 201) at a daily average flow rate of 1,078,000 gallons per day during the interim phase and 1,650,000 gallons per day during the final phase via Outfall 001. The facility is located 3863 South State Highway 60, approximately 1.4 miles southwest of the City of Wharton, Wharton County, Texas 77488.

SMITH INTERNATIONAL INC AND SMITH INTERNATIONAL INDUSTRIAL SUBDIVISION WATER SUPPLY AND SEWER SERVICES CORPORATION which operates a facility that manufactures equipment and machinery for use in the oil and gas industry, has applied for a major amendment to TPDES Permit No. WQ0002453000 to remove effluent monitoring requirements from the permit for total chromium, total cadmium, total silver, total lead, amenable cyanide, and total toxic organics. The effluent limitations and monitoring requirements for these parameters remain in the draft permit based on federal requirements. The existing permit authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, and laboratory wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 16740 East Hardy Road, approximately 3500 feet south of the intersection of East Hardy Road and Rankin Road, in the City of Houston, Harris County, Texas 77032.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201301003

Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 6, 2013

◆ ◆ ◆  
**Texas Facilities Commission**

**Request for Proposals #303-4-20372**

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-4-20372. TFC seeks a five (5) or ten (10) year lease of approximately 10,270 square feet of office space in Tarrant County, Texas.

The deadline for questions is March 25, 2013, and the deadline for proposals is April 1, 2013, at 3:00 p.m. The award date is May 15, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=104691](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104691).

TRD-201300963  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: March 4, 2013

◆ ◆ ◆  
**Request for Proposals #303-4-20373**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-4-20373. TFC seeks a five (5) or ten (10) year lease of approximately 4,852 square feet of office space in Brazoria County, Texas.

The deadline for questions is April 17, 2013, and the deadline for proposals is May 1, 2013, at 3:00 p.m. The award date is May 24, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=104689](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=104689).

TRD-201300964  
Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: March 4, 2013

**Texas Health and Human Services Commission**

**Public Notice**

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for renewal to the Home and Community-based Services (HCS) waiver program, under the authority of §1915(c) of the Social Security Act. The Home and Community-based Services waiver program is currently approved for a five-year period beginning September 1, 2008, and ending August 31, 2013. The proposed effective date for the renewal is September 1, 2013.

The Home and Community-based Services program provides service and supports to persons with intellectual disabilities who live in their own home or family home or in a community setting such as a small group home. To be eligible for the program, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

Changes in the waiver program will include an addition of the outline for the new oversight process, update to the definition for supported employment to ensure consistency across all 1915(c) Medicaid waiver programs, the consumer directed services agencies contract monitoring will be revised to reflect that monitoring is conducted at least every three years, and language related to the fair hearing process will be added. Also the interest list process will be amended for individuals denied waiver enrollment based on diagnosis or other functional eligibility requirements. Eligibility criteria outlined in the waiver will be updated to include the mandatory participation requirements. The Health and Human Services Commission is requesting that the waiver renewal be approved for the period beginning September 1, 2013, through August 31, 2018. This renewal maintains cost neutrality for waiver years 2013 through 2018. To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1315, fax (512) 491-1957, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us).

TRD-201300907  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: February 27, 2013

◆ ◆ ◆  
**Public Notice**

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Community-Based Alternatives (CBA) waiver program, under the authority of §1915(c) of the Social Security Act. The Community-Based Alternatives Services waiver program is currently approved for the five-year period beginning September 1, 2012, and ending August 31, 2017. The proposed effective date for the amendment is June 1, 2013.

The Community-Based Alternatives program provides home and community-based services to persons age 21 and older who meet the requirements for nursing facility care and do not reside in Texas Healthcare Transformation and Quality Improvement Program Home and Community-Based Services (HCBS) STAR+PLUS waiver service areas. Services are offered in the participant's home, an adult foster care home, or a licensed assisted living facility. Services include personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation; respite care; prescribed drugs; financial management services; adap-

tive aids and medical supplies; dental; emergency response services; home delivered meals; minor home modifications; and transition assistance services.

The Health and Human Services Commission is requesting that the Centers for Medicare & Medicaid Services approve this waiver amendment to move 67 slots from the CBA waiver under the "individuals who are at imminent risk of placement in a nursing facility" Reserved Capacity Group to the Healthcare Transformation Quality Improvement Program 1115 waiver. This group includes those individuals who are at imminent risk of entering a nursing facility as a result of a catastrophic episode. Examples of a catastrophic episode may include: (1) an individual is significantly dependent on a caregiver to remain in the community and the caregiver passes away or is suddenly no longer able to provide care; (2) an individual has a community support system but must suddenly move where there is no support system; (3) an individual has a sudden occurrence that would cause imminent placement in a nursing facility because he can no longer care for himself; and (4) an individual is identified by the Texas Department of Family and Protective Services as being at imminent risk of nursing facility placement.

The Texas Health and Human Services Commission is requesting that the Centers for Medicare and Medicaid Services approve this waiver amendment beginning June 1, 2013, and ending August 31, 2017. The waiver amendment application maintains cost neutrality for federal year 2013 through 2017.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1388, fax (512) 491-1957, or by email at TX\_Medicaid\_Waivers@hhsc.state.tx.us.

TRD-201301014

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: March 6, 2013

## Department of State Health Services

### Correction of Error

The Department of State Health Services adopted new 25 TAC §289.227, concerning Use of Radiation Machines in the Healing Arts, in the February 22, 2013, issue of the *Texas Register* (38 TexReg 1185). The rule was adopted with changes and was republished in the issue. Two of the figures in §289.227 which appeared in the Tables & Graphics portion of the issue were published with errors.

On page 1226, Figure: 25 TAC §289.227(e)(18), two symbols in the equation were omitted. An "=" sign is missing from the expression "i=1" and the symbol "/" is missing from the superscript "1/2".

On page 1228, Figure: 25 TAC §289.227(s)(1), the last line of the table was omitted.

The figures are republished here and will be corrected in the *Texas Administrative Code*.

Figure: 25 TAC §289.227(e)(18)

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \left[ \sum_{i=1}^n \frac{(X_i - \bar{X})^2}{n-1} \right]^{1/2}$$

where :  $s$  = estimated standard deviation of the population

$\bar{X}$  = mean value of observations in sample

$X_i$  =  $i$ th observation in sample

$n$  = number of observations in sample

Figure: 25 TAC §289.227(s)(1)

Name of Record/Document	Rule Cross Reference	Time Interval for Keeping Records
(A) Current 25 TAC §§289.203, 289.204, 289.205, 289.226, 289.227, and 289.231	As listed on certificate of registration	Until termination of registration
(B) Current certificate of registration	§289.203(b)(1)(B)	Until termination of registration
(C) Notice of violation from last inspection, if applicable	§289.203(b)(1)(D)	Until next agency inspection
(D) Documentation of correction of any violations	§289.203(b)(1)(D)	Until next inspection
(E) Annual Radiation Machine Inventory	§289.226(m)(1)(B)	3 years
(F) Receipt, transfer, and disposal	§289.226(m)(1)(D)	Until termination of registration
(G) Records of training and experience	§289.226(m)(4)	Until termination of registration or 5 years after personnel leave the facility
(H) FDA variances on x-ray systems	§289.227(h)	Until termination of registration
(I) Current operating and safety procedures	§289.227(i)(2)	Until termination of registration
(J) Protective devices annual check	§289.227(i)(4)(B)	3 years
(K) Credentials of individuals operating radiation machines	§289.227(i)(5)	Until 2 years after the individual leaves that facility
(L) Records of dosimetry system Calibrations	§289.227(i)(14)	5 years
(M) Records of maintenance and repairs of radiation machines	§289.227(l)(7) and (8) and (o)(4)	5 years
(N) Entrance exposure rate (air kerma rate)/fluoroscopy	§289.227(m)(3)(D)	10 years
(O) Records of Radiation Protocol Committee for FGI and CT procedures (i) meeting minutes  (ii) protocol revisions	§289.227(m)(9)(A)(ii) §289.227(n)(6)(A)(ii)	5 years
	§289.227(m)(9)(C)(ii) §290.227(n)(6)(C)(ii)	5 years
(P) Records of radiation safety awareness training for physicians	§289.227(m)(9)(E)(vi)	As long as the physician performs FGI procedures
(Q) CT films resulting from quality control tests	§289.227(n)(5)	10 years
(R) Equipment performance evaluations and corrections	§289.227(o)(3) and (o)(4)(B)	10 years
(S) Film processing records and corrections	§289.227 (p)(2), (3), (5), and (6)	3 years
(T) Alternate processing system records	§289.227(q)	3 years
(U) Digital imaging acquisition system records	§289.227(r)	3 years
(V) Personnel monitoring records	§289.231(m)	Until termination of registration
(W) Surveys (public dose evaluation)	§289.231(p)	Until termination of registration

## HOME Investment Partnerships Program 2012 HOME Single Family Programs Reservation System Notice of Funding Availability (NOFA)

**(1) Summary.** The Texas Department of Housing and Community Affairs (the "Department") announces the availability of approximately \$22,768,903 in funding from the HOME Investment Partnerships Program (HOME) for single family housing programs under a Reservation System. The availability and use of these funds is subject to the state Single Family Programs Umbrella Rule at 10 TAC Chapter 20, §§20.1 - 20.15, and the state HOME Rules at 10 TAC Chapter 23, concerning Single Family HOME Program ("HOME Rules") in effect at the time the Reservation System Participation (RSP) application is submitted, the federal HOME regulations governing the HOME program (24 CFR Part 92.), and Texas Government Code, Chapter 2306. Other federal regulations apply, including but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for conflict of interest, 24 CFR §135.38 for §3 requirements and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

### **(2) Allocation of HOME Funds.**

(a) The funds are made available through the Department's 2012 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD), deobligated HOME funds, uncommitted funds, and HOME Program Income funds. These funds are not subject to the Regional Allocation Formula (RAF), because funds were regionally allocated during the release of previous HOME Program NOFAs. Applications submitted prior to 5:00 p.m. December 4, 2012, were subject to the Regional Allocation Formula.

(b) Approximately \$16,346,102 in funds is available under this NOFA, of which \$5,346,102 was subject to the RAF, \$5,000,000 was not subject to the RAF, and the remaining \$6,000,000 is being reprogrammed to this NOFA in accordance with the Department's Deobligation Policy. These funds may be reserved for individual households for the following Program Activities:

(i) Homeowner Rehabilitation Assistance (HRA). HRA provides funds for the rehabilitation, or demolition and reconstruction of single family residences owned and occupied by low-income eligible households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 - 23.32.

(ii) Homebuyer Assistance (HBA). HBA provides down payment and closing cost assistance to eligible low-income homebuyers. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 - 23.42.

(iii) Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income households. Assistance may include rental deposit and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.

(c) Approximately \$6,422,801 in funds available under this NOFA, and not subject to the RAF, may be reserved for individual households for the following set-aside Program Activities:

(i) Persons with Disabilities (PWD) Set-Aside. Approximately \$3,208,569 in funding is set-aside to assist Persons with Disabilities with TBRA, HRA, or HBA.

(ii) Contract for Deed Conversion (CFDC) Set-Aside. Approximately \$2,000,000 in funding is set-aside to assist eligible households un-

til March 29, 2013 at which time Staff may re-direct (reprogram) \$1,000,000 if insufficient demand exists in this set-aside and these funds are needed in order to satisfy excess (higher) demand of other Single Family HOME Program Activities. An additional \$250,000 will be re-directed on July 1, 2013 if insufficient demand still exists and there is a need to satisfy excess demands of other Single Family HOME Program Activities. CFDC provides funds for the conversion of a contract for deed to a traditional mortgage. Additional funds for rehabilitation or reconstruction are also available. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Conversion Program, §§23.50 - 23.52.

(iii) Disaster Relief Set-Aside. In accordance with 10 TAC Chapter 1, §1.19, relating to Deobligated Funds, approximately \$1,214,232 in funding is set-aside to assist eligible households. Disaster Relief assistance may provide Homeowner Rehabilitation Assistance, Homebuyer Assistance, or Tenant-Based Rental Assistance to eligible households directly affected by a natural disaster.

(d) Staff may reprogram additional HOME funds, except for funds set-aside for PWD, at anytime to the Reservation System for any HOME Activity specified in this NOFA in order to satisfy excess (higher) demand of other Single Family HOME Program Activities, in accordance to the Department's deobligation policy at 10 TAC Chapter 1 §1.19.

(e) After Tuesday, December 4, 2012 any funds which were not requested under §(2)(a) of this NOFA collapsed and were made available statewide for any activity under this NOFA.

(f) Applications to participate in the Reservation System will be accepted by the Department on an ongoing basis until 5:00 p.m. Friday, March 29, 2013 except for applications submitted under the set-aside Activities which may be submitted at any time the Department is accepting applications.

(g) Updated balances for the reservation system may be accessed online at [www.tdhca.state.tx.us/home-division/home-reservation-summary.htm](http://www.tdhca.state.tx.us/home-division/home-reservation-summary.htm). Reservations of funds may be submitted at any time during the term of a Reservation System Participation Agreement, or until such time as RSP funds are exhausted, whichever comes first.

### **(3) Eligible and Prohibited Activities.**

(a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 23 relating to Single Family HOME Program.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside.

(c) Eligible Applicants are Units of General Local Government, Non-profit Organizations, and Public Housing Authorities.

### **(4) Application Threshold Requirements.**

(a) Threshold Criteria. Threshold criteria in 10 TAC Chapter 23, concerning Single Family HOME Program are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement.

### **(5) Application Submission.**

(a) All applications for a Reservation System Participation Agreement submitted under this NOFA must be received on or before 5:00 p.m. Friday, March 29, 2013, regardless of method of delivery, except for applications submitted under the set-aside Activities, which may be submitted at any time the Department is accepting applications. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published in the *Texas Register* until the deadline date. For

questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via email at HOME@tdhca.state.tx.us.

(b) All applications must be submitted and documentation provided as described in 10 TAC Chapter 23 and the Application Submission Procedures Manual (ASPM).

(c) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.

(d) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check, or money order. Do not send cash. The Application fee is not an allowable or reimbursable cost under the HOME Program. An Applicant that is a Nonprofit Organization may request a fee waiver in accordance with Texas Government Code, §2306.147(b).

(e) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

(f) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Single Family Division

221 East 11th Street

Austin, Texas 78701-2410

Or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Single Family Division

P.O. Box 13941

Austin, Texas 78711-3941

TRD-201301006

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 6, 2013



## Texas Department of Insurance

### Company Licensing

Application to change the name of ARKANSAS COMMUNITY CARE, INC. to HUMANA REGIONAL HEALTH PLAN, INC., a foreign Health Maintenance Organization (HMO) company. The home office is in Little Rock, Arkansas.

Application for admission to the state of Texas by LIFEWISE ASSURANCE COMPANY, a foreign Life, Accident and/or Health company. The home office is in Mountlake Terrace, Washington.

Application for admission to the state of Texas by FALCON INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Oak Brook, Illinois.

Application for admission to the State of Texas by UNITED AUTO-MOBILE INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Miami Gardens, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201301008

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: March 6, 2013



## Texas Department of Licensing and Regulation

### Vacancies on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302, Subchapter E. The pertinent rules may be found in 16 TAC §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing this chapter, and setting fees. This announcement amends the announcement published in the March 8, 2013, issue of the *Texas Register* (38 TexReg 1732).

The Board is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The board consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; four full-time licensed air conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; and one public member. At least one appointed board member must be an air conditioning and refrigeration contractor who employs organized labor. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.

This announcement is for a Class A licensee who practices in a municipality with a population of more than 25,000 but not more than 250,000; and a Class B licensee who practices in a municipality with a population of not more than 25,000. Additionally the Department seeks a contractor who hires organized labor.

Interested persons should submit an application on the Department website at: <https://www.license.state.tx.us/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax (512) 475 2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201301016

◆       ◆       ◆

## Texas Lottery Commission

Instant Game Number 1505 "Mucho Cash Fiesta"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1505 is "MUCHO CASH FIESTA".  
The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1505 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1505.

A. Display Printing - That area of the Instant Game Ticket outside of  
the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play  
Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the  
Instant Ticket that is used to determine eligibility for a prize. Each  
Play Symbol is printed in symbol font in black ink in positive except  
for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4,  
5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25,  
26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MARACAS  
SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500,  
\$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each  
Play Symbol which explains the Play Symbol. One caption appears  
under each Play Symbol and is printed in caption font in black ink  
in positive. The Play Symbol Caption which corresponds with and  
verifies each Play Symbol is as follows:



Figure 1: GAME NO.1505 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MARACAS SYMBOL	DOUBLE
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1505), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1505-0000001-001.

K. Pack - A Pack of "MUCHO CASH FIESTA" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MUCHO CASH FIESTA" Instant Game No. 1505 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MUCHO CASH FIESTA" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MARACAS" Play Symbol, the player wins DOUBLE the PRIZE for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS Play Symbols on a Ticket.

C. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No more than three identical non-winning Prize Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 10 and \$10).

G. The "MARACAS" (doubler) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MUCHO CASH FIESTA" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MUCHO CASH FIESTA" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MUCHO CASH FIESTA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MUCHO CASH FIESTA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MUCHO CASH FIESTA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name

or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 Tickets in the Instant Game No. 1505. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1505 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	750,400	10.71
\$10	857,600	9.38
\$15	321,600	25.00
\$20	107,200	75.00
\$50	23,450	342.86
\$100	36,314	221.40
\$500	5,159	1,558.44
\$1,000	160	50,250.00
\$50,000	10	804,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1505 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1505, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201301011

Bob Biard

General Counsel

Texas Lottery Commission

Filed: March 6, 2013



### Instant Game Number 1517 "3X Multiplier"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1517 is "3X MULTIPLIER". The play style is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1517 shall be \$3.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1517.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,

44, 45, \$3.00, \$6.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$100, \$300, \$1,000, \$3,000, and \$30,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1517 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRTO
42	FRTW
43	FRTE
44	FRFR
45	FRFV
\$3.00	THREE\$

\$6.00	SIX\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EGHTN
\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINTY
\$100	ONE HUND
\$300	THR HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, or \$24.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90.00, or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1517), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1517-0000001-001.

K. Pack - A Pack of "3X MULTIPLIER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3X MULTIPLIER" Instant Game No. 1517 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "3X MULTIPLIER" Instant Game is determined once the latex on the Ticket is scratched off to expose 50 (fifty) Play Symbols. IN EACH GAME ACROSS: If a player's LUCKY NUMBER Play Symbol matches the SINGLE YOUR NUMBER Play Symbol, the player wins the prize for that game. If a player's LUCKY NUMBER Play Symbol matches the DOUBLE YOUR NUMBER Play Symbol, the player wins DOUBLE the prize for that game. If the player's LUCKY NUMBER Play Symbol matches the TRIPLE YOUR NUMBER Play Symbol, the player wins TRIPLE the prize for that game. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 50 (fifty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.
- B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.
- C. Each of the Play Symbols will be used an equal number of times in winning and non-winning plays.
- D. The ten (10) LUCKY NUMBERS Play Symbols will all be different.
- E. The YOUR NUMBERS Play Symbols in each of the ten (10) GAMES will all be different.

F. No Ticket will ever contain more than two (2) identical non-winning Prize Symbols.

G. Non-winning Play Symbols will never appear more than two (2) times.

H. The top prize will appear on every Ticket unless otherwise restricted.

I. No prize amount in a non-winning game will correspond with the LUCKY NUMBER Play Symbol (i.e., 6 and \$6).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "3X MULTIPLIER" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, \$90.00, or \$300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3X MULTIPLIER" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "3X MULTIPLIER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.



E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "3X MULTIPLIER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "3X MULTIPLIER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize

that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1517. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1517 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	672,000	8.93
\$6	576,000	10.42
\$9	156,000	38.46
\$15	36,000	166.67
\$18	60,000	100.00
\$24	48,000	125.00
\$30	24,000	250.00
\$60	11,900	504.20
\$90	5,000	1,200.00
\$300	400	15,000.00
\$3,000	16	375,000.00
\$30,000	6	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1517 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1517, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201300930

Bob Biard

General Counsel

Texas Lottery Commission

Filed: March 1, 2013



## Instant Game Number 1539 "Bonus Ball Bingo"

### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1539 is "BONUS BALL BINGO". The play style is "bingo".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1539 shall be \$3.00 per Ticket.

### 1.2 Definitions in Instant Game No. 1539.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, \$3.00, \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, and \$100.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1539 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$25.00	TWY FIV
\$50.00	FIFTY
\$100.00	ONE HUND

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$8.00, \$10.00, or \$15.00.

G. Mid-Tier Prize - A prize of \$25.00, \$33.00, \$50.00, \$75.00, \$100, \$125, or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$40,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1539), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1539-0000001-001.

K. Pack - A Pack of "BONUS BALL BINGO" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BALL BINGO" Instant Game No. 1539 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, 16 TAC §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "BONUS BALL BINGO" Instant Game is determined once the latex on the Ticket is scratched off to expose 133 (one hundred thirty-three) Play Symbols. For the game BINGO, the player must scratch off the "CALLER'S CARD" and the Bonus Bingo Balls area to reveal 24 (twenty-four) Bingo Numbers, 3 (three) Extra Numbers and 3 (three) Bonus Bingo Balls Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 4 that match the Bingo Numbers and Extra Numbers on the "CALLER'S CARD", and the Bonus Bingo Balls Numbers. Each "CARD" has a corresponding prize legend. On any one "CARD": Players win by matching those same numbers on the four Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the "CARD", or an X, the player wins a prize according to the prize legend of the corresponding "CARD". Examples of play: If a player matches all bingo numbers plus the "FREE" space in a complete horizontal, vertical or diagonal line in any one "CARD", the player wins prize according to the prize legend of the corresponding "CARD". If the player matches all bingo numbers in all four (4) corners in any one "CARD", the player wins prize according to the prize legend of the corresponding "CARD". If the player matches all bingo numbers plus "FREE" space to make a complete "X" in any one "CARD", the player wins prize according to the prize legend of the corresponding "CARD". BONUS PLAY: Each time one of a player's BONUS BINGO BALLS Numbers appears in CARD 1, CARD 2, CARD 3, or CARD 4, the player wins the PRIZE shown for that BONUS BINGO BALL. NOTE: Only one prize per "CARD". No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

## 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 133 (one hundred thirty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol captions.

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 133 (one hundred thirty-three) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 133 (one hundred thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 133 (one hundred thirty-three) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a

defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket will win as indicated by the prize structure.

B. A Ticket can win up to four times and only once per BINGO CARD.

C. Adjacent Tickets in a Pack will not have identical patterns.

D. No duplicate numbers will appear on the CALLER'S CARD, EXTRA NUMBERS and BONUS BINGO BALLS Numbers areas.

E. No duplicate numbers will appear on each individual BINGO CARD.

F. Consecutive Non-Winning Tickets within a Pack will not have identical patterns.

G. Only the highest prize won per BINGO CARD will be paid.

H. Each CALLER'S CARD will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The EXTRA NUMBERS and the BONUS BINGO BALL numbers combined will have a minimum of one (1) and a maximum of two (2) numbers for each range per letter.

I. The number range used for each letter will be as follows: B: 01-15, I: 16-30, N: 31-45, G: 46-60, O: 61-75.

J. Each BINGO CARD on the same Ticket must be different.

K. The 24 CALLER'S CARD numbers and 3 EXTRA NUMBERS will match 35 to 55 numbers per Ticket (not including the FREE spaces).

L. All three BONUS BINGO BALLS on a Ticket will be different.

M. The BONUS BINGO BALLS will win according to the prize structure.

N. The BONUS BINGO BALLS Numbers area can win up to three (3) times.

O. A BONUS BINGO BALL that matches a number on a BINGO CARD is considered revealed.

P. Each winning BONUS BINGO BALL will only match one number across the four (4) BINGO CARDS.

Q. All non-winning prize amounts will be different.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BALL BINGO" Instant Game prize of \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$25.00, \$33.00, \$50.00, \$75.00, \$100, \$125, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$33.00, \$50.00, \$75.00, \$100, \$125, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS BALL BINGO" Instant Game prize of \$1,000 or \$40,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BALL BINGO" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BONUS BALL BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BONUS BALL BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1539. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1539 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	728,000	8.24
\$5	264,000	22.73
\$8	96,000	62.50
\$10	192,000	31.25
\$15	144,000	41.67
\$25	83,125	72.18
\$33	8,750	685.71
\$50	5,000	1,200.00
\$75	1,925	3,116.88
\$100	2,400	2,500.00
\$125	1,500	4,000.00
\$500	250	24,000.00
\$1,000	15	400,000.00
\$40,000	5	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1539 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1539, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201300931  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: March 1, 2013

◆ ◆ ◆  
**Texas Low-Level Radioactive Waste Disposal Compact Commission**

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Entergy Nuclear Operations, Inc. - James A. FitzPatrick Nuclear Plant (TLLRWDCC #1-0030-00)  
277 Lake Road  
Oswego, NY 13126

The application is being placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by April 1, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe Street, #3-240  
Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwdcc.org](mailto:administration@tllrwdcc.org).

TRD-201300965  
Audrey Ferrell  
Administrator  
Texas Low-Level Radioactive Waste Disposal Compact Commission  
Filed: March 4, 2013

◆ ◆ ◆  
**Notice of Receipt of Application for Importation of Waste and Import Agreement**

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Tennessee Valley Authority (TLLRWDC #1-0031-00)

1101 Market Street

Chattanooga, TN 37402

Mail Stop: BR 3C-C

The application is being placed on the Compact Commission web site, [www.tllrwddc.org](http://www.tllrwddc.org), where it will be available for inspection and copying.

Comments on the application are due to be received by April 1, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission  
333 Guadalupe Street, #3-240

Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllrwddc.org](mailto:administration@tllrwddc.org).

TRD-201300966

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: March 4, 2013

◆ ◆ ◆  
**Panhandle Regional Planning Commission**

**Legal Notice**

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to provide fiscal and program monitoring services for the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). Monitoring services to be provided are to ensure that the programs, functions and activities supported by Texas Workforce Commission (TWC) funds are in compliance with applicable federal and/or state requirements, and that programs achieve intended results, resources are efficiently and effectively used for authorized purposes, and resources are protected from waste, fraud, and abuse. The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin at (806) 372-3381/(800) 477-4562 or [lharden@theprpc.org](mailto:lharden@theprpc.org). The proposals must be submitted to PRPC no later than April 12, 2013.

TRD-201301017

Leslie Hardin

Workforce Development Facilities, Training and Support Coordinator  
Panhandle Regional Planning Commission

Filed: March 6, 2013

**Public Utility Commission of Texas**

**Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas received an application on March 4, 2013, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Ultra Communications Group, LLC for State-Issued Certificate of Franchise Authority, Project Number 41263.

The requested SICFA service area consists of unincorporated areas of the following counties: Liberty, San Jacinto, Hardin, Jefferson, Tyler, Jasper, Lee, Fayette, Coke, Taylor, and Tom Green, as shown on the maps attached to the application.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41263.

TRD-201301001

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 5, 2013

◆ ◆ ◆  
**Award of RFP Number 473-13-00105 for an Evaluation, Measurement, and Verification Program**

The Public Utility Commission of Texas (PUCT) is issuing an award notice of proposal for an evaluation, measurement and verification (EM&V) program. The Contractor shall develop an EM&V program that promotes effective program design and consistent and streamlined reporting. The EM&V contractor operates under the supervision and oversight of the PUCT.

**Description of Services:**

The EM&V Contractor shall assist the PUCT by documenting the gross and net energy and demand impacts of utilities' individual energy efficiency and load management portfolios; determining cost-effectiveness; preparing and maintaining a statewide Technical Reference Manual (TRM); providing feedback for the PUCT, utilities, and other stakeholders on program portfolio performance; and providing input into the utilities' and ERCOT's planning activities. EM&V Contractor shall offer independent analysis to the PUCT in order to assist in making decisions in the public interest.

**Name of Contractor:**

Tetra Tech MA, Inc.

700 N St. Mary's Street, Suite 300

San Antonio, TX 78205

**Duration of Contract and Award Amount:**

February 15, 2013 - December 31, 2014

\$5,688,417.00

TRD-201300967

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 5, 2013

◆ ◆ ◆  
**Award of RFP Number 473-13-00137 to Provide Technical Consulting Services**

The Public Utility Commission of Texas (PUCT) is issuing an award notice for a contractor to provide technical consulting services. The Contractor shall provide analyst services to study the issues and effects of Entergy Texas, Inc. (ETI) leaving the Entergy System Agreement and joining the MidWest Independent System Operator (MISO). The contractor operates under the supervision and oversight of the PUCT.

**Description of Services:**

The Contractor shall provide technical consulting services related to the compliance proceeding PUCT Docket 40979 concerning the membership of ETI in a regional transmission organization and ETI's participation in and orderly transition out of the Entergy System Agreement (ESA).

The ESA Transition Study shall include, but not be limited to, identification of options and recommendations for achieving an orderly transition out of the ESA and integration into MISO including solving operational issues, economic impacts, contract issues and optimal exit timing including what steps must be taken by ETI.

**Name of Contractor:**

The Liberty Consulting Group  
65 Main Street, P.O. Box 1237  
Quentin, PA 17083

**Duration of Contract and Award Amount:**

February 15, 2013 - August 31, 2013

\$724,080.00

TRD-201300968  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 5, 2013

◆ ◆ ◆  
**Notice of Application for a Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 27, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Clear Rate Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 41247.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant intends to provide telecommunications services within the exchanges served by Verizon Southwest throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than March 22, 2013. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41247.

TRD-201300947  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 4, 2013

◆ ◆ ◆  
**Notice of Application for Amendment to Certificated Service Area Boundary**

Notice is given to the public of an application filed on February 26, 2013, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change between its Austin Metropolitan Exchange-Round Rock Zone and the Verizon Southwest Georgetown Exchange. Docket Number 41244.

The Application: The minor boundary amendment is being filed to realign the boundary between the Austin Metropolitan Exchange-Round Rock Zone of AT&T Texas and the Georgetown Exchange of Verizon Southwest (Verizon). The amendment will allow AT&T Texas to provide local exchange telecommunications service to the entire Teravista Georgetown subdivision. Verizon provided a letter of concurrence endorsing the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 22, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800)735-2989. All comments should reference Docket Number 41244.

TRD-201300949  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 4, 2013

◆ ◆ ◆  
**Notice of Application for Amendment to Certificated Service Area Boundary**

Notice is given to the public of an application filed on February 28, 2013, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Service Area Boundary Change between its Liberty Hill Exchange and the Verizon Southwest Georgetown Exchange. Docket Number 41253.

The Application: The minor boundary amendment is being filed to realign the boundary between the Liberty Hill Exchange of AT&T Texas and the Georgetown Exchange of Verizon Southwest (Verizon). The amendment will allow AT&T Texas to provide local exchange telecommunications service to the entire Gabriel's Ridge subdivision. Verizon provided a letter of concurrence endorsing the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 22, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41253.

TRD-201301000  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 5, 2013



#### Notice of Application for Amendment to Service Provider Certificates of Operating Authority

On February 25, 2013, Matrix Telecom, Inc. d/b/a Matrix Business Technologies and d/b/a Trinsic Communications filed an application to amend service provider certificates of operating authority (SPCOA) Numbers 60108 and 60868, respectively. Applicant seeks approval to transfer ownership/control to Impact Telecom, Inc.

The Application: Application of Matrix Telecom, Inc. d/b/a Matrix Business Technologies and d/b/a Trinsic Communications for Amendment to Service Provider Certificates of Operating Authority, Docket Number 41242.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than March 22, 2013. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 41242.

TRD-201300906  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 27, 2013



#### Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 27, 2013, for an amendment to certificated service area for a service area exception within Frio County, Texas.

Docket Style and Number: Application of AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Frio County. Docket Number 41250.

The Application: AEP Texas Central Company (AEP TCC) filed an application for a service area exception to allow AEP TCC to provide service to a specific customer located within the certificated service area of Karnes Electric Cooperative, Inc. (Karnes). Karnes has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 22, 2013, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 41250.

TRD-201300948  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 4, 2013



#### Notice of ERCOT's Filing for Approval of Re-Election of Unaffiliated Director

Notice is hereby given to the public of the March 4, 2013, filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas, Inc. (ERCOT) for Approval of Re-Election of an Unaffiliated Director.

Docket Style and Number: Petition of the Electric Reliability Council of Texas, Inc. for Approval of Re-Election of Unaffiliated Director, Docket Number 41260.

The Application: ERCOT seeks approval of the re-election of an Unaffiliated Director of the ERCOT Board. The commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 2007 and Supplement 2012). ERCOT requests approval of the re-election of Mr. Bermudez to serve on the ERCOT Board beginning July 1, 2013, pending commission approval. On January 24, 2013, pursuant to the direction of the ERCOT Board, ERCOT issued a notice of Special Meeting of ERCOT's Corporate Membership for February 19, 2013, for the re-election of Mr. Bermudez as an Unaffiliated Director. Mr. Bermudez received the requisite number of Corporate Member votes by ballot on February 15, 2013, in lieu of the Special Meeting, to be re-elected as an Unaffiliated Director for a second three-year term.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or 1-800-735-2989. All correspondence should refer to Docket Number 41260.

TRD-201300973  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 5, 2013



#### Request for Comments

The Public Utility Commission of Texas is requesting comments in Project No. 22066, *Numbering Plan Area Relief Planning for the 281, 713 and 832 Area Codes*. The purpose of this proceeding is to review the petition by the North American Numbering Plan Administrator for the approval of an overlay of an additional area code for the 281, 713 and 832 area code numbering plan area. Comments should be filed no later than April 5, 2013 at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. All comments should reference Project No. 22066.

Questions on this notice should be referred to Jolie Mathis, Infrastructure and Reliability Division, at (512) 936-7322 or Jason Haas, Legal Division, at (512) 936-7295. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201301010  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 6, 2013

◆ ◆ ◆  
**Supreme Court of Texas**

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-9032

CORRECTION TO AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE

**ORDERED** that:

1. By Order dated November 13, 2012, in Misc. Docket No. 12-9190, the Court implemented word limits by amending Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71, effective December 1, 2012. That order is corrected as follows by amending Rules of Appellate Procedure 9, 28, and 52, effective immediately.

**2. Rule 9.4. Form**

...

(i) *Length.*

...

(3) Certificate of Compliance. A computer-generated document that is subject to a word limit under this rule must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

**3. Rule 28.3. Permissive Appeals in Civil Cases.**

...

(g) *Length of Petition, Cross-Petition, Response, and Reply.* A petition, cross-petition, response, and reply must comply with the page length limitations in Rule 53-6 9.4(i)(2)(D)-(E).

**4. Rule 52.9. Motion for Rehearing**

Any party may file a motion for rehearing within 15 days after the final order is rendered. The motion must clearly state the points relied on for the rehearing. No response to a motion for rehearing need be filed unless the court so requests. The court will not grant a motion for rehearing unless a response has been filed or requested. ~~A motion or response must be no longer than 15 pages.~~

5. The Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of the Order for publication in the *Texas Register*.

Dated: March 4, 2013

\_\_\_\_\_  
Wallace B. Jefferson, Chief Justice

\_\_\_\_\_  
Nathan L. Hecht, Justice

\_\_\_\_\_  
Paul W. Green, Justice

\_\_\_\_\_  
Phil Johnson, Justice

\_\_\_\_\_  
Don R. Willett, Justice

\_\_\_\_\_  
Eva M. Guzman, Justice

\_\_\_\_\_  
Debra H. Lehmann, Justice

\_\_\_\_\_  
Jeffrey S. Boyd, Justice

\_\_\_\_\_  
John P. Devine, Justice

TRD-201300993

Marisa Secco

Rules Attorney

Supreme Court of Texas

Filed: March 5, 2013

◆ ◆ ◆  
**Texas Department of Transportation**

Aviation Division - Request for Qualifications for Professional Services

The Town of Addison, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: Town of Addison, Addison Municipal Airport. TxDOT CSJ No. 1318ADISN.

Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36A, latest edition. The assessment will include but is not limited to an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of "features on or near the airport that attract wildlife"; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE requirement. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551

template. The AVN-551 format consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

**Seven** completed copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **4:00 p.m., April 9, 2013**. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects).

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Daniel Benson, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201300999

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 5, 2013



**Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services**

The City of Winnsboro, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Winnsboro Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Winnsboro. TxDOT CSJ No.: 1310WNSBR.

Scope: Provide engineering/design services to:

1. reconstruct Hangar Access Taxiway
2. install security fence and gates

3. install lighted wind cone
4. rehabilitate segmented circle
5. regrade drainage ditches

The HUB goal for the current project is 9 percent. The TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following: rehabilitate and mark runway; rehabilitate parallel taxiway; rehabilitate apron; rehabilitate hangar access taxiways; and construct T-Hangar.

The City of Winnsboro reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

by selecting "Winnsboro Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**Six** completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than **4:00 p.m., April 9, 2013**. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members and one local member. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201300998

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 5, 2013



#### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Olney, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Olney Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Olney. TxDOT CSJ No.: 13HGOLNEY. Scope: Provide engineering/design services to construct T-hangars and hangar access taxiway and relocate entrance road.

The DBE/HUB goal for the current project is 6 percent. TxDOT Project Manager is Eusebio Torres, P.E.

Future scope work items for engineering/design services within the next five years may include the following:

1. Install MIRL and PAPI-4 RWs 4-22
2. Reconstruct vehicle parking area
3. Rehabilitate apron and hangar access TW
4. Rehabilitate and mark RW 17-35 & RW 4-22
5. Rehabilitate and mark RW17-35 parallel TW
6. Rehabilitate and mark RW 4-22 parallel TW

The City of Olney reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

by selecting "Olney Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects).

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight and one half by eleven inches pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

**Six** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **April 9, 2013, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at

[www.txdot.gov/inside-txdot/division/aviation/projects](http://www.txdot.gov/inside-txdot/division/aviation/projects)

under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Eusebio Torres, P.E., Project Manager.

TRD-201301013

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 6, 2013



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)